NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
LITTERA SCRIPTA MANET
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 127 July 1, 2016

Pages 42983–43462

OFFICE OF THE FEDERAL REGISTER

1985

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 81, No. 127

Friday, July 1, 2016

Agency for Toxic Substances and Disease Registry
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43202–43203

Agriculture Department
See Animal and Plant Health Inspection Service
See Foreign Agricultural Service
See Forest Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Civil Monetary Penalty Inflation Adjustment:
  Alcoholic Beverage Labeling Act, 43062–43065

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Explosives License or Permit, 43248
  National Response Team Customer Satisfaction Survey, 43248–43249

Animal and Plant Health Inspection Service
PROPOSED RULES
Importation of Bone-In Ovine Meat from Uruguay, 43115–43120
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Importation of Fruit From Thailand Into the United States, 43183
  Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables, 43182–43183

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43203–43206

Coast Guard
RULES
Civil Monetary Penalty Adjustments for Inflation, 42987–43006
Safety Zones:
  Annual Firework Displays within the Captain of the Port, Puget Sound Zone, 43085
  Confluence of James River and Appomattox River, Hopewell, VA, 43087–43089
  Ohio River Mile 42.5 to 43.0, Chester, WV, 43089–43091
  Shallowbag Bay, Manteo, NC, 43085–43087
Special Local Regulations and Safety Zones:
  Recurring Events Held in the Coast Guard Sector Northern New England Captain of the Port Zone, 43079–43084
PROPOSED RULES
Safety Zones:
  South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL, 43178–43180

Commerce Department
See Economic Analysis Bureau
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 43190–43191

Community Development Financial Institutions Fund
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43335–43336

Comptroller of the Currency
RULES
Rules of Practice and Procedure in Adjudicatory Proceedings:
  Civil Money Penalty Inflation Adjustments, 43021–43028

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43191–43192

Defense Department
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Commercial Item Acquisitions, 43201–43202

Economic Analysis Bureau
PROPOSED RULES
Direct Investment Surveys:
  Survey of New Foreign Direct Investment in the United States, Changes to Private Fund Reporting on Direct Investment Surveys, 43126–43130

Economic Development Administration
NOTICES
Meetings:
  National Advisory Council on Innovation and Entrepreneurship, 43184–43185

Employee Benefits Security Administration
RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461

Employment and Training Administration
RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461
NOTICES
Job Corps Center for Closure, 43250–43254

Energy Department
See Federal Energy Regulatory Commission

RULES

Energy Conservation Program:
  Test Procedures for Integrated Light-Emitting Diode Lamps, 43404–43428

NOTICES

Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations:
  Eagle LNG Partners Jacksonville LLC, 43192–43194

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:
  New Jersey; Carbon Monoxide Maintenance Plan, 43096–43097
Civil Monetary Penalty Inflation Adjustment Rule, 43091–43096
Engine-Testing Procedures; CFR Correction, 43101
Pesticide Tolerances; Exemptions from Requirements:
  2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, 43097–43101

PROPOSED RULES

Protection of Visibility:
  Requirements for State Plans, 43180–43181

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43197–43198
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants, 43199
Environmental Impact Statements; Availability, etc., 43198
Meetings:
  Environmental Financial Advisory Board, 43198–43199

Federal Accounting Standards Advisory Board

NOTICES

Issuance of Statement of Federal Financial Accounting Standards, 43199–43200

Federal Aviation Administration

RULES

Airworthiness Directives:
  Rolls-Royce Deutschland Ltd and Co KG Turbofan Engines, 43037–43038
Class E Airspace; Amendments:
  Belleville, KS; Johnson, KS; Marysville, KS; Pittsburg, KS; and Washington, KS, 43038–43040

PROPOSED RULES

Airworthiness Directives:
  Bombardier, Inc. Airplanes, 43122–43124
  Dassault Aviation Airplanes, 43120–43122
Class E Airspace; Amendments:
  Carmi, IL; De Kalb, IL; Harrisburg, IL; Kewanee, IL; Litchfield, IL; Paris, IL; and Taylorville, IL, 43124–43126

Federal Communications Commission

RULES

Radio Broadcasting Services:
  Raymond, WA, 43101

NOTICES

Meetings:
  Open Commission Meeting, 43200–43201

Federal Contract Compliance Programs Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43254–43261

Federal Energy Regulatory Commission

NOTICES

Combined Filings, 43194
Meetings:
  Reactive Supply Compensation in Markets Operated by Regional Transmission Organizations and Independent System Operators; Workshop Supplement, 43194–43197
Section 206 Proceeding and Refund Effective Date:
  Midwest Generation, LLC, 43194

Federal Financial Institutions Examination Council

NOTICES

Meetings:
  Appraisal Subcommittee, 43201

Federal Housing Finance Agency

RULES

Implementation of the Program Fraud Civil Remedies Act of 1986, 43031–43036
Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment, 43028–43031

Federal Railroad Administration

RULES

Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order, 43105–43114
Inflation Adjustment of the Ordinary Maximum and Aggravated Maximum Civil Monetary Penalties for a Violation of the Hazardous Material Transportation Laws or Regulations, Orders, Special Permits, and Approvals Issued Under Those Laws, 43101–43105

Fiscal Service

RULES

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds, 43069–43070

Fish and Wildlife Service

NOTICES

Environmental Impact Statements; Availability, etc.:
  Programmatic Review of Harvest Actions for Salmon and Steelhead in the Columbia River Basin Related to U.S. v. Oregon, 43187–43188
Permit Applications:
  Endangered Species; Marine Mammals, 43223–43224
Permits:
  Endangered Species; Marine Mammals, 43222–43223

Food and Drug Administration

RULES

Guidance:
  Policy on Declaring Small Amounts of Nutrients and Dietary Ingredients on Nutrition Labels, 43061–43062

PROPOSED RULES

Submission of Food and Drug Administration Import Data in the Automated Commercial Environment, 43155–43178

NOTICES
- Guidance for Industry:
  - Vulvovaginal Candidiasis: Developing Drugs for Treatment, 43212–43214
- Guidance:
  - Bioequivalence Recommendations for Paliperidone Palmitate, 43209–43210
  - Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information, 43206–43207
  - Elemental Impurities in Drug Products, 43211–43212
  - Recurrent Herpes Labialis: Developing Drugs for Treatment and Prevention, 43210–43211
- Meetings:
  - Erythropoietic Protoporphyria; Scientific Workshop, 43207–43209

Foreign Agricultural Service

RULES
- Local and Regional Food Aid Procurement Program, 43006–43019

Foreign Assets Control Office

RULES
- Implementation of the Federal Civil Penalties Inflation Adjustment Act, 43070–43077

Forest Service

NOTICES
- Environmental Impact Statements; Availability, etc.:
  - Tongass National Forest Land and Resource Management Plan Amendment, 43183–43184

General Services Administration

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Commercial Item Acquisitions, 43201–43202

Geological Survey

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43224–43225

Health and Human Services Department

See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43215–43216
- Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas, 43214–43215

Homeland Security Department

See Coast Guard
See Transportation Security Administration
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

RULES
- Civil Monetary Penalty Adjustments for Inflation, 42987–43006

- Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments:
  - H–2B Temporary Non-agricultural Worker Program, 42983–42986

Industry and Security Bureau

NOTICES
- Meetings:
  - Information Systems Technical Advisory Committee, 43185

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Ocean Energy Management Bureau
See Office of Natural Resources Revenue

International Trade Administration

NOTICES
- Initiation of Five-Year (Sunset) Reviews, 43185–43187

International Trade Commission

NOTICES
- Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  - Ammonium Nitrate from Russia, 43232–43234
  - Heavy Forged Hand Tools from China, 43235–43238
  - Stainless Steel Plate from Belgium, South Africa, and Taiwan, 43245–43248
  - Stainless Steel Sheet and Strip from Japan, Korea, and Taiwan, 43238–43240
- Complaints:
  - Certain Hand Dryers and Housings for Hand Dryers, 43241–43242
- Institution of Formal Enforcement Proceedings:
  - Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same, 43242–43243
- Investigations; Determinations, Modifications, and Rulings, etc.:
  - Certain Inkjet Printers, Printheads, and Ink Cartridges, Components Thereof, and Products Containing Same, 43244–43245
  - Certain Laser-Driven Light Sources, Subsystems Containing Laser-Driven Light Sources, and Products Containing Same, 43234–43235
  - Certain Magnetic Data Storage Tapes and Cartridges Containing the Same, 43243–43244
  - Certain Windshield Wipers and Components Thereof, 43240–43241

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

RULES
- Office for Access to Justice, 43065–43066

NOTICES
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Assessing Potential Benefits of Accessible Web Content for Individuals Who Are Blind, 43249–43250
- Proposed Consent Decrees under CERCLA, 43250

Labor Department

See Employee Benefits Security Administration
See Employment and Training Administration
See Federal Contract Compliance Programs Office
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

See Wage and Hour Division
See Workers Compensation Programs Office
RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461

Land Management Bureau

NOTICES
Environmental Impact Statements; Availability, etc.:
  Dominguez-Escalante National Conservation Area, CO; Proposed Land and Resource Management Plan, 43226–43228
  Roan Plateau Planning Area, CO; Proposed Land and Resource Management Plan Amendment, 43225–43226
Temporary Closure and Temporary Restrictions of Specific Uses on Public Lands for the Burning Man Event (Permitted Event), Pershing County, NV, 43228–43232

Legal Services Corporation

NOTICES
Final Guidelines for Automated Financial-Eligibility Screening, 43261–43262

Mine Safety and Health Administration

RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461

National Aeronautics and Space Administration

RULES
Space Flight, 43040–43042
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Commercial Item Acquisitions, 43201–43202

National Archives and Records Administration

See Office of Government Information Services
NOTICES
Records Schedules; Availability, 43262–43264

National Credit Union Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Privacy of Consumer Financial Information Recordkeeping and Disclosure Requirements Under Gramm-Leach-Bliley Act and Regulation P, 43264–43265

National Institutes of Health

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Population Assessment of Tobacco and Health Study—Fourth Wave of Data Collection, 43217–43219
Charter Renewals:
  Office of AIDS Research Advisory Council, 43216–43217
Meetings:
  National Cancer Institute; Cancellation, 43217
  National Institute on Alcohol Abuse and Alcoholism, 43217

National Oceanic and Atmospheric Administration

NOTICES
Endangered and Threatened Species:
  Take of Anadromous Fish, 43188–43190
Environmental Impact Statements; Availability, etc.:
  Programmatic Review of Harvest Actions for Salmon and Steelhead in the Columbia River Basin Related to U.S. v. Oregon, 43187–43188
Meetings:
  North Pacific Fishery Management Council, 43190

Navy Department

RULES
Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972, 43077–43079

Nuclear Regulatory Commission

RULES
Adjustment of Civil Penalties for Inflation, 43019–43021
NOTICES
Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses, 43266–43292

Occupational Safety and Health Administration

RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461

Ocean Energy Management Bureau

RULES
Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Civil Penalties Inflation Adjustments, 43066–43069

Office of Government Information Services

NOTICES
Meetings:
  Freedom of Information Act Advisory Committee, 43264

Office of Natural Resources Revenue

RULES
Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform, 43338–43402

Postal Regulatory Commission

NOTICES
New Postal Products, 43292–43293

Postal Service

NOTICES
Clarification of the Move Update Standard, 43293–43294
Reassignment of Post Office Box Section 98025 to Competitive Fee Group, and of Sections 87325 and 87326 to Market Dominant Fee Groups, 43294–43295

Securities and Exchange Commission

RULES
Adjustments to Civil Monetary Penalty Amounts, 43042–43047
Adoption of Updated EDGAR Filer Manual, 43047–43048
PROPOSED RULES
Smaller Reporting Company Definition; Amendments, 43130–43154
NOTICES
Applications:
  MainStay Funds Trust, et al., 43301–43306
Self-Regulatory Organizations; Proposed Rule Changes:
  Bats BYX Exchange, Inc., 43306–43308, 43330–43332
  Bats BZX Exchange, Inc., 43295–43297
  Bats EDGA Exchange, Inc., 43315–43318

Bats EDGX Exchange, Inc., 43318–43320
BOX Options Exchange LLC, 43322–43326
Chicago Board Options Exchange, Inc., 43308–43315
NYSE Arca, Inc., 43297–43301, 43327, 43332–43334
NYSE MKT LLC, 43320–43322
The NASDAQ Stock Market LLC, 43327–43330

Small Business Administration
NOTICES
Interest Rates, 43334

Social Security Administration
RULES
Revised Medical Criteria for Evaluating Neurological Disorders, 43048–43061

State Department
NOTICES
Designations as Foreign Terrorist Organizations:
  al-Qa'ida in the Indian Subcontinent, a.k.a. al-Qaeda in the Indian Subcontinent, a.k.a. Qaedat al-Jihad in the Indian Subcontinent, 43334

Surface Transportation Board
NOTICES
Petitions for Declaratory Orders:
  Newvista Property Holdings, LLC In Utah County, UT; Adverse Abandonment of the Ironton Branch, 43334–43335

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration

Transportation Security Administration
RULES
Civil Monetary Penalty Adjustments for Inflation, 42987–43006

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Community Development Financial Institutions Fund
See Comptroller of the Currency
See Fiscal Service
See Foreign Assets Control Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 43336

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Waiver of Grounds of Inadmissibility, 43221–43222

U.S. Customs and Border Protection
NOTICES
Final Country of Origin Determinations:
  Certain Network Cables and Transceivers, 43219–43221

Wage and Hour Division
RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments:
  H–2B Temporary Non-agricultural Worker Program, 42983–42986

Workers Compensation Programs Office
RULES
Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 43430–43461

Separate Parts In This Issue

Part II
Interior Department, Office of Natural Resources Revenue, 43338–43402

Part III
Energy Department, 43404–43428

Part IV
Labor Department, Employee Benefits Security Administration, 43430–43461
Labor Department, Employment and Training Administration, 43430–43461
Labor Department, Mine Safety and Health Administration, 43430–43461
Labor Department, Occupational Safety and Health Administration, 43430–43461
Labor Department, Wage and Hour Division, 43430–43461
Labor Department, Workers Compensation Programs Office, 43430–43461
Labor Department, 43430–43461

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

6 CFR
27.....42987

7 CFR
1590.....43006

8 CFR
270.....42987
274a.....42987
280.....42987

9 CFR
Proposed Rules:
94.....43115

10 CFR
2.....43019
13.....43019
429.....43404
430.....43404

12 CFR
19.....43021
109.....43021
1209.....43028
1217.....43031
1250.....43028

14 CFR
39.....43037
71.....43038
1214.....43040
Proposed Rules:
39 (2 documents).....43120, 43122
71.....43124

15 CFR
Proposed Rules:
801.....43126

17 CFR
201.....43042
232.....43047
Proposed Rules:
229.....43130
230.....43130
240.....43130

20 CFR
404.....43048
655.....43430
702.....43430
725.....43430
726.....43430

21 CFR
101.....43061
Proposed Rules:
1.....43155
1005.....43155
1271.....43155

27 CFR
16.....43062

28 CFR
XXX.....43065

29 CFR
5.....43430
500.....43430
501.....43430
503.....42983
530.....43430
570.....43430
578.....43430
579.....43430
801.....43430
825.....43430
1902.....43430
1903.....43430
2560.....43430
2575.....43430
2590.....43430

30 CFR
100.....43430
550.....43066
553.....43066
1202.....43338
1206.....43338

31 CFR
356.....43069
501.....43071
535.....43071
536.....43071
537.....43071
538.....43071
539.....43071
541.....43071
542.....43071
543.....43071
544.....43071
546.....43071
547.....43071
548.....43071
549.....43071
560.....43071
561.....43071
566.....43071
576.....43071
588.....43071
592.....43071
593.....43071
594.....43071
595.....43071
597.....43071
598.....43071

32 CFR
706.....43077

33 CFR
27.....42987
100.....43079
165 (5 documents).....43079, 43085, 43087, 43089
Proposed Rules:
165.....43178

40 CFR
19.....43091
52.....43096
180.....43097
1065.....43101
Proposed Rules:
51.....43180
52.....43180

41 CFR
50–201.....43430

47 CFR
73.....43101

49 CFR
209 (3 documents).....43101, 43105
213.....43105
214.....43105
215.....43105
216.....43105
217.....43105
218.....43105
219.....43105
220.....43105
221.....43105
222.....43105
223.....43105
224.....43105
225.....43105
227.....43105
228.....43105
229.....43105
230.....43105
231.....43105
232.....43105
233.....43105
234.....43105
235.....43105
236.....43105
237.....43105
238.....43105
239.....43105
240.....43105
241.....43105
242.....43105
243.....43105
244.....43105
272.....43105
1503.....42987

Rules and Regulations

Federal Register
Vol. 81, No. 127
Friday, July 1, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2585–16]

RIN 1615–AC10

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 503

RIN 1235–AA15

Department of Homeland Security and Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments for the H–2B Temporary Non-agricultural Worker Program

AGENCY: Department of Homeland Security; Wage and Hour Division, Department of Labor.

ACTION: Interim final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, "the Departments") are jointly issuing this interim final rule to adjust the amounts of civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H–2B program. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by annual adjustments for inflation. The Departments are required to calculate the catch-up and subsequent annual adjustments based on the Consumer Price Index for all Urban Consumers. The Departments must publish the interim final rule by July 1, 2016, and the new penalty levels must be effective no later than August 1, 2016. The increased penalty levels will apply to all penalties assessed after the effective date, August 1, 2016, for associated violations that occurred after November 2, 2015, as discussed below.

DATES: This interim final rule is effective August 1, 2016. The adjusted civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the Inflation Adjustment Act. Therefore, violations occurring on or before November 2, 2015, as well as assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts currently set forth in the regulations in 29 CFR part 503 (2015). Interested persons are invited to submit written comments on this interim final rule on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA15, by either of the following methods:

Electronic Comments: Comments may be sent via *http://www.regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type in "Department of Homeland Security and Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Mail: Address written submissions to Robert Waterman, Compliance Specialist, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agencies' names and the RIN 1235–AA15. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments that are mailed must be received by the date indicated for consideration.

Docket: For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Peters, Program Analyst, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5959 (this is not a toll-free number). Copies of this interim final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Regulatory Information

The U.S. Department of Homeland Security (DHS) and U.S. Department of Labor (DOL) (collectively, "the Departments") are promulgating this interim final rule to ensure that the amount of civil penalties assessed or enforced in our joint rules reflect the statutorily mandated maximum as adjusted for inflation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("Inflation Adjustment Act"), the Departments are required to promulgate a "catch-up adjustment" through an interim final rule. Pursuant to the Inflation Adjustment Act and 5 U.S.C. 553(b)(3)(B), the Departments find that good cause exists for issuance of this interim final rule without prior notice and comment. By operation of the Inflation Adjustment Act, the Departments must publish the catch-up adjustment by July 1, 2016, and the rule must be effective no later than August 1, 2016. The Inflation Adjustment Act further provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Additionally, the Inflation Adjustment Act provides a clear formula for adjustment of the civil penalties, leaving the agencies little room for discretion. Both because of the requirement for action by July 1 of this year, and because of the mechanistic nature of the rulemaking, the Departments find that notice and comment prior to issuing the inflation adjustment would be impracticable and unnecessary, respectively, in addition to being contrary to the language of the Inflation Adjustment Act.

II. Background

Inflation Adjustment Act

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 ("Inflation Adjustment Act"), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, as previously amended by the 1996 Debt Collection Improvement Act (collectively, the "Prior Inflation Adjustment Act"), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation.

The method of calculating inflation adjustments in the Inflation Adjustment Act differs substantially from the methods used in past inflation adjustment rulemakings conducted pursuant to the Prior Inflation Act. Previously, adjustments to civil penalties were conducted under rules that required significant rounding of figures. For example, a penalty increase that was greater than $1,000, but less than or equal to $10,000, would be rounded to the nearest multiple of $1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent. Over time, this formula caused penalties to lose value relative to total inflation.

The Inflation Adjustment Act has removed these rounding rules; now, penalties are simply rounded to the nearest $1. This rounding ensures that penalties will be increased each year to a figure commensurate with the actual calculated inflation, and ensures that penalties are more easily and consistently updated. Furthermore, the Inflation Adjustment Act "resets" the inflation calculations by excluding prior inflationary adjustments under the Prior Inflation Act, which contributed to a decline in the real value of penalty levels. To do this, the Inflation Adjustment Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (*i.e.*, originally enacted by Congress or by regulation) or last adjusted other than pursuant to the Prior Inflation Act.

Pursuant to the Inflation Adjustment Act, the Departments have reviewed the civil penalties for the H–2B program that are enforced by the Department of Labor. This interim final rule sets forth the initial "catch-up" adjustment only for these civil penalties. As required by the Inflation Adjustment Act, these civil penalties levels will subsequently be adjusted annually for inflation.

DOL's Enforcement Authority in the H–2B Program

The Immigration and Nationality Act (INA) establishes the H–2B nonimmigrant classification for a non-agricultural temporary worker "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country." 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). DHS, which is charged with administration of the H–2B program, may grant a petition for an H–2B nonimmigrant worker "after consultation with appropriate agencies of the Government." 8 U.S.C. 1184(c)(1), INA section 214(c)(1). DHS regulations therefore provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A). The temporary labor certification serves as DHS's consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D).[1]

The INA also authorizes DHS to impose appropriate remedies, including civil monetary penalties, against an employer for a substantial failure to meet the terms and conditions of employing an H–2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H–2B nonimmigrant worker. 8 U.S.C. 1184(c)(14)(A), INA section 214(c)(14)(A). The INA expressly and specifically authorizes DHS to delegate to DOL the aforementioned H–2B enforcement authorities. 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B). DHS has delegated this authority to DOL, including authority over the civil monetary penalty established by law at associated 8 U.S.C. 1184(c)(14)(A)(i), INA section 214(c)(14)(A)(i). *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the Immigration and Nationality Act (Jan. 16, 2009) (available in the online docket for this Interim Final Rule at *http://www.regulations.gov,* in the Supporting Documents section); *see* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of, among other things, an H–2B petition and a DOL-approved temporary labor certification). Consistent with 8 CFR 214.2(h)(6)(ix) and DHS's delegation of statutory enforcement authority, DOL has authority to independently set, adjust, and impose civil monetary penalties under 8 U.S.C. 1184(c)(14)(A)(i), INA section 214(c)(14)(A)(i), and the Inflation Adjustment Act, amending the Prior Inflation Act.

Joint Issuance

On April 29, 2015, following a court's vacatur of nearly all of DOL's H–2B regulations, the Departments jointly promulgated an interim final rule governing DOL's role in enforcing the statutory and regulatory rights and obligations applicable to employment under the H–2B program. *See* Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24,042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503) ("2015 H–2B IFR"). These regulations include a provision regarding the assessment of civil monetary penalties by the Department of Labor. *See* 29 CFR 503.23.

As explained in the 2015 H–2B IFR, following conflicting legal decisions about the Department of Labor's authority to independently issue legislative rules to carry out its duties for the H–2B program under the INA, the Departments jointly issued the 2015 H–2B IFR "to ensure that there can be no question about the authority for and validity of the regulations in this area." *See* 80 FR 24,045; *see also* 24,044–47. The Departments further explained that by issuing the 2015 H–2B IFR jointly, "the Departments affirm that this rule is fully consistent with the INA and implementing DHS regulations and is vital to DHS's ability to faithfully implement the statutory labor protections attendant to the program.'' *Id.*

---

[1] DHS requires DOL to structure this consultative process by issuing regulations. *Id.* (requiring the Secretary of Labor "to separately establish for the temporary labor program under his or her jurisdiction, by regulation at 20 CFR 655, procedures for administering that temporary labor program under his or her jurisdiction").

Litigation on these and related matters is ongoing. Accordingly, notwithstanding that DOL has authority to independently issue this inflation adjustment, and to ensure that there can be no question about the authority underlying this action, DHS and DOL are jointly issuing this Interim Final Rule.[2] The Interim Final Rule implements the Federal Civil Penalties Inflation Adjustment Act's requirements with respect to the civil monetary penalty provisions found at 29 CFR 503.23.

III. Analysis

Section 214(c)(14) of the INA, 8 U.S.C. 1184(c)(14), provides for the imposition of civil money penalties for a substantial failure to meet the terms and conditions of employing an H–2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H–2B nonimmigrant worker. This civil money penalty appears in regulation at 29 CFR 503.23. Applicable violations include those related to wages, impermissible deductions, prohibited fees and expenses, and improper refusal to employ or hire U.S. workers, among others. Existing § 503.23(b), (c), and (d) provide for a civil money penalty not to exceed $10,000 per violation. The maximum penalty amount last established by statute or regulation other than the Inflation Adjustment Act was $10,000 in 2005 and is the same as the existing maximum penalty amount. *See* Save Our Small and Seasonal Businesses Act of 2005, Title IV of Pub. L. 109–13, 404 (May 11, 2005).

To adjust the existing civil money penalty for this section, the Departments multiplied that maximum penalty amount by the inflation adjustment factor for 2005 of 1.19397, which resulted in a penalty of $11,940. The amount of the increase from $10,000 to $11,940 is $1,940, which is less than the statutory cap of 150% of the existing $10,000 penalty, which is $15,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 503.23(b), (c), and (d) are revised to increase the maximum penalties for these violations from $10,000 to $11,940 per violation.

The Departments invite comments on the calculations outlined in this interim final rule.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Departments consider the impact of paperwork and other information collection burdens imposed on the public. The Departments have determined that this interim final rule does not require any collection of information.

V. Executive Orders 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues.

The Departments have determined that this interim final rule is not a ''significant'' regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Departments, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

As provided by Section 701(b)(1)(A) of the Inflation Adjustment Act, the Departments considered whether to publish a notice of proposed rulemaking to explore whether increasing the civil monetary penalty by the otherwise-required amount will have a negative economic impact or whether the social costs of increasing the civil monetary penalty by the otherwise required amount outweighs the benefits. The Departments determined that no such proposed rule is necessary given the modest increases to statutory penalties provided by the Inflation Adjustment Act, especially given the statutory cap.

In that context, Congress has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This interim final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by E.O. 13563.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b), and that are likely to have a significant economic impact on a substantial number of small entities. This interim final rule is exempt from the notice and comment requirements of the APA because the Inflation Adjustment Act directed agencies to issue an interim final rule. Moreover, pursuant to the Inflation Adjustment Act and 5 U.S.C. 553(b)(3)(B), the Departments find that good cause exists for issuing this interim final rule without prior notice and comment. By operation of the Inflation Adjustment Act, the Departments must publish the catch-up adjustment by July 1, 2016, and the rule must be effective no later than August 1, 2016. Additionally, the Inflation Adjustment Act provides a clear formula for adjustment of the civil penalties, leaving the agencies little room for discretion. For these reasons, the Departments find that providing notice and comment before issuing the IFR would be impracticable and unnecessary in this situation and contrary to the language of the Inflation Adjustment Act.

Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this interim final rule. Accordingly, the Departments are not required to either certify that the interim final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. Indeed, the rule only adjusts for the effects of inflation.

---

[2] Consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), INA section 214(c)(14) and the Federal Civil Penalties Inflation Adjustment Act, DOL will make future adjustments to the civil monetary penalty.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

Because the interim final rule simply adjusts for inflation, it does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Executive Order 13132: Federalism

This interim final rule does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. Executive Order 13175, Indian Tribal Governments

This interim final rule does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

D. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This interim final rule will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This interim final rule will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Environmental Impact Assessment

This action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This action is therefore categorically excluded from further review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375.

G. Executive Order 13211, Energy Supply

This interim final rule has not been identified to have impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

H. Executive Order 12630, Constitutionally Protected Property Rights

This interim final rule will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

I. Executive Order 12988, Civil Justice Reform Analysis

This interim final rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This interim final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Departments have determined that this interim final rule meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects in 29 CFR Part 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, Labor, Penalties, Transportation, Wages.

Accordingly, for the reasons stated in the preamble, 29 CFR part 503 is amended as follows:

PART 503–ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON–AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

■ 1. The authority citation for part 503 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

■ 2. Amend § 503.23 by revising paragraph (b), the first sentence of paragraph (c), and paragraph (d) to read as follows:

§ 503.23 Civil money penalty assessment.

* * * * *

(b) Upon determining that an employer has violated any provisions of § 503.16 related to wages, impermissible deductions or prohibited fees and expenses, the Administrator, WHD, may assess civil money penalties that are equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s), not to exceed $11,940 per violation.

(c) Upon determining that an employer has terminated by layoff or otherwise or has refused to employ any worker in violation of § 503.16(r), (t), or (v), within the periods described in those sections, the Administrator, WHD may assess civil money penalties that are equal to the wages that would have been earned but for the layoff or failure to hire, not to exceed $11,940 per violation. * * *

(d) The Administrator, WHD, may assess civil money penalties in an amount not to exceed $11,940 per violation for any other violation that meets the standards described in § 503.19.

* * * * *

Signed at Washington, DC this 28th day of June, 2016.

Jeh Charles Johnson,

Secretary of Homeland Security.

Signed at Washington, DC this 23 day of June, 2016.

Thomas E. Perez,

Secretary of Labor.

[FR Doc. 2016–15679 Filed 6–30–16; 8:45 am]

BILLING CODE 4510–27–9111–97–P

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

8 CFR Parts 270, 274a, and 280

Coast Guard

33 CFR Part 27

Transportation Security Administration

49 CFR Part 1503

RIN 1601–AA80

[Docket No. DHS–2016–0034]

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Department of Homeland Security.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (DHS or Department) regulations to adjust DHS and component civil monetary penalties for inflation. DHS calculated the adjusted penalties according to the statutory formula in the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which was signed into law on November 2, 2015. The adjusted penalties will be effective for civil penalties assessed after August 1, 2016 whose associated violations occurred after November 2, 2015.

DATES: *Effective Date.* This rule is effective on August 1, 2016.

Comment Date: Comments must be received on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0034, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Megan Westmoreland, Office of the General Counsel, U.S. Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0485, Washington, DC 20528–0485.

FOR FURTHER INFORMATION CONTACT: Megan Westmoreland, Attorney-Advisor, Office of the General Counsel, U.S. Department of Homeland Security. Phone: 202–447–4384.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Adjustments by Component
  A. National Protection and Programs Directorate
  B. U.S. Customs and Border Protection
  C. Immigration and Customs Enforcement
  D. U.S. Coast Guard
  E. Transportation Security Administration
III. Administrative Procedure Act
IV. Regulatory Analyses
  A. Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act
  D. Paperwork Reduction Act

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2105)) (the 2015 Act),[1] which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (the Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation.

The 2015 Act applies to all agency civil penalties except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). See sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are collected by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard fall under the Tariff Act of 1930, and thus DHS is not adjusting those civil penalties in this rulemaking.

The 2015 Act applies the new penalty amounts to all penalties that DHS assesses after August 1, 2016, the effective date of this rule. Additionally, pursuant to 28 U.S.C. 2461 note sec. 6, as amended by the 2015 Act, DHS will apply the adjusted penalty amounts for any violations that occurred after November 2, 2015 (*i.e.*, the date the 2015 Act was signed into law) as long as the penalty is assessed after the effective date of this interim final rule.

The 2015 Act provides a new method for calculating inflation adjustments. The new method differs substantially from the methods that agencies used in the past when conducting inflation adjustments pursuant to the 1990 Inflation Adjustment Act. The new method is intended to more accurately reflect inflation. Previously, when agencies conducted adjustments to civil penalties, they did so under rules that required significant rounding of figures. For example, an agency would round a penalty increase that was greater than $1,000, but less than or equal to $10,000, to the nearest multiple of $1,000. While this allowed penalties to be kept at round numbers, it meant that agencies would often not increase penalties at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent, which meant that longer periods without an inflation adjustment could cause a penalty to rapidly lose value in real terms. Over time, the formula used in the 1990 Inflation Adjustment Act calculations frequently caused penalties to lose value relative to actual inflation. The 2015 Act removed these rounding rules, and instead instructs agencies to round penalties to the nearest $1. While this creates penalty values that are no longer round numbers, it does ensure that agencies will increase penalties each year to a figure commensurate with the actual calculated inflation.

To better reflect the original impact of civil penalties, the 2015 Act "resets" the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act. To do this, the 2015 Act requires agencies to identify, for each penalty, the year that Congress originally enacted the maximum penalty level/range of minimum and maximum penalty levels or the year that the agency last adjusted the penalty amount other than to pursuant to the Inflation Adjustment Act, and the corresponding penalty amount(s). The 2015 Act then requires agencies to perform an initial "catch-up" adjustment, using the original amounts of civil penalties as a baseline, so that the 2016 penalty levels are equal, in real terms, to the penalty amounts as they were originally established.

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer. This rule sets forth the initial "catch-up" adjustment for all civil penalties that DHS and its components administer. For each component, we have provided a table showing how DHS is increasing the penalties pursuant to the 2015 Act. The table contains the following information:

- In the first column (penalty name), we provide a description of the penalty.
- In the second column (citation), we provide the statutory cite from the United States Code (U.S.C.) and the regulatory cite from the Code of Federal Regulations (CFR).

---

[1] The 2015 Act was enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

- In the third column (current penalty), we list the existing penalty in effect on November 2, 2015.
- In the fourth column (baseline penalty (year)), we provide the amount and year of the penalty as enacted by Congress or as last changed through a mechanism other than pursuant to the Inflation Adjustment Act, whichever is later.
- In the fifth column (multiplier), we list the multiplier used to adjust the penalty. The multiplier is determined by the year of enactment or last adjustment of the penalty. The multiplier is based upon the Consumer Price Index (CPI–U) for the month of October 2015, not seasonally adjusted.[2]
- In the sixth column (preliminary new penalty), we list the amount obtained by multiplying the Baseline Penalty from column 4 with the Multiplier from column 5. This amount will be the final penalty, if, in accordance with the 2015 Act, this level does not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015.[3]
- In the seventh column, (adjusted new penalty), we provide the final number for the penalty. To derive this number, we compare the preliminary new penalty with the current penalty from column 3. The adjusted new penalty is the lesser of either the preliminary new penalty or an amount equal to 150 percent more than the current penalty.

Additionally, where applicable, we have also made conforming edits to regulatory text.

II. Adjustments by Component

In the following sections, we briefly describe the civil penalties that DHS and its components assess. We describe the nature of the penalties and discuss relevant authorities. We include tables at the end of each section, which list the individual adjustments for each penalty. We also include discussions where we believe further explanation is helpful.

A. National Protection and Programs Directorate

The National Protection and Programs Directorate (NPPD) administers only one civil penalty that the 2015 Act affects. This penalty assesses fines for violations of the Chemical Facility Anti-Terrorism Standards (CFATS), a program which regulates the security of chemical facilities that, in the discretion of the Secretary, present high levels of security risk. The CFATS program was originally established in 2007, pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109–295),[4] and is currently located in part 27 of Title 6 of the CFR.

One question that arose is how to calculate the baseline date of the CFATS penalty, which is $25,000 per day. The question arose because the 2007 legislation, which established CFATS, did not create a new penalty provision, but rather referenced an older one:[5] Section 70119(a) of Title 46. The Maritime Transportation Security Act (MTSA) (Pub. L. 107–295) was enacted in 2002 and established this penalty provision. For that reason, arguments could be made that we should index the $25,000 penalty by the 2002 CPI value (the date the MTSA penalty was established) or the 2007 CPI value (the date the CFATS program was enacted). The difference between these numbers is material—indexing the $25,000 penalty by the 2002 CPI value would yield a current penalty of $32,796 per day, while indexing the penalty by the 2007 CPI value would yield a current penalty of only $28,458 per day.

Because the CFATS legislation did not create a new civil penalty, but rather simply referenced the existing MTSA penalty, we believe the intent of Congress was that violators of either MTSA or CFATS would face identical penalties. For this reason, we have considered the "baseline" year for the CFATS penalty to be 2002 rather than 2007, and have increased the penalty by the multiplier appropriate for that year, as shown in Table 1 below.

TABLE 1—CFATS CIVIL PENALTY ADJUSTMENT

Penalty name	Citation	Current penalty	Baseline penalty* (year)	Multiplier**	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Penalty for non-compliance with CFATS regulations.	6 U.S.C. 624(b)(1); 6 CFR 27.300(b)(3)	$25,000 per day	$25,000 (2002)	1.31185	$32,796	$32,796

*The amount of the penalty and the year of when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

**OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016.

B. U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) assesses civil monetary penalties for certain violations of title 8 of the CFR regarding the Immigration and Nationality Act of 1952 (Pub. L. 82–414, as amended) (INA). The INA contains provisions that impose penalties on persons, including carriers and aliens, who violate specified provisions of the INA. For example, section 231(g) of the INA, codified at 8 U.S.C. 1221(g), requires that a carrier shall be fined $1,000 for each person for whom manifest information is not provided.

CBP's relevant penalty provisions are located in numerous sections of the INA (see list below), however CBP has enumerated these penalties in regulation in one location—in 8 CFR 280.53. Below is the list of penalty provisions in the INA:

---

[2] OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A, 24 February 2016. *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf*.

[3] The 150 percent limitation is on the amount of the increase; therefore, the adjusted penalty levels are up to 250 percent of the levels in effect on November 2, 2015.

[4] Section 550 has since been superseded by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254). The new legislation codified the statutory authority for the CFATS program within Title XXI of the Homeland Security Act of 2002, as amended. See 6 U.S.C. 621 *et seq.*

[5] Section 550(d) of the Department of Homeland Security Appropriations Act of 2007 set forth the CFATS penalty, providing that "[a]ny person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code. After promulgation of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the relevant U.S.C. citation is 6 U.S.C. 624(b)(1), which still refers to the civil penalty section in 46 U.S.C. 70119(a).

- Section 231(g), Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.
- Section 234, Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.
- Section 240B(d), Penalties for failure to depart voluntarily.
- Section 243(c)(1)(A), Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) or for costs associated with removal under section 241(e).
- Section 243(c)(1)(B), Penalties for failure to remove alien stowaways under section 241(d)(2).
- Section 251(d), Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 and penalties for use of alien crewmen for longshore work in violation of section 251(d).
- Section 254(a), Penalties for failure to control, detain, or remove alien crewmen.
- Section 255, Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.
- Section 256, Penalties for discharge of alien crewmen.
- Section 257, Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.
- Section 271(a), Penalties for failure to prevent the unauthorized landing of aliens.
- Section 272(a), Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.
- Section 273(b), Penalties for bringing to the United States aliens without required documentation.
- Section 274D, Penalties for failure to depart.
- Section 275(b), Penalties for improper entry.

We note, for reference, that CBP also assesses certain civil monetary penalties for customs violations under title 19 of the CFR. CBP assesses those penalties under the Tariff Act of 1930, as amended, but as we discussed above, the 2015 Act specifically exempts Tariff Act penalties from the inflation adjustment requirements in the 2015 Act. For that reason, we have not listed those title 19 penalties in the below table of CBP penalty adjustments.

Under this rule, the current penalties continue to be applicable with regard to violations that occurred on or before November 2, 2015, the date of enactment of the 2015 Act. In Table 2 below, we provide the penalties that we are adjusting in accordance with the 2015 Act, where the associated violations occurred after November 2, 2015.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Current penalty	Baseline penalty * (year)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.	8 U.S.C. 1221(g) 8 CFR 280.53(c)(1) (INA section 231(g)).	$1,100	$1,000 (2002)	1.31185	$1,312	$1,312
Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.	8 U.S.C. 1224 8 CFR 280.53(c)(2) (INA section 234).	$3,200	$2,000 (1990)	1.78156	$3,563	$3,563
Penalties for failure to depart voluntarily.	8 U.S.C. 1229c(d) 8 CFR 280.53(c)(3) (INA section 240B(d)).	$1,100–$5,500	$1,000–$5,000 (1996)	1.50245	$1,502–$7,512.	$1,502–$7,512
Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA, or for costs associated with removal under section 241(e) of the INA.	8 U.S.C. 1253(c)(1)(A). 8 CFR 280.53(c)(4) (INA section 243(c)(1)(A)).	$2,200	$2,000 (1996)	1.50245	$3,005	$3,005

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty * (year)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.	8 U.S.C. 1253(c)(1)(B). 8 CFR 280.53(c)(4) (INA section 243(c)(1)(B)).	$5,500	$5,000 (1996)	1.50245	$7,512	$7,512
Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the INA.	8 U.S.C. 1281(d) 8 CFR 280.53(c)(5) (INA section 251(d)).	$320 for each alien	$200 for each alien (1990).	1.78156	$356 for each alien.	$356 for each alien
Penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.	8 U.S.C. 1281(d) 8 CFR 280.53(c)(5) (INA section 251(d)).	$7,500	$5,000 (1990)	1.78156	$8,908	$8,908
Penalties for failure to control, detain, or remove alien crewmen.	8 U.S.C. 1284(a) 8 CFR 280.53(c)(6) (INA section 254(a)).	$750–$4,300	$500–$3000 (1990)	1.78156	$891–$5,345	$891–$5,345
Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.	8 U.S.C. 1285 8 CFR 280.53(c)(7) (INA section 255).	$1,100	$1,000 (1990)	1.78156	$1,782	$1,782
Penalties for discharge of alien crewmen.	8 U.S.C. 1286 8 CFR 280.53(c)(8) (INA section 256).	$1,500–$4,300	$1,500–$3,000 (1990)	1.78156	$2,672–$5,345.	$2,672–$5,345
Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.	8 U.S.C. 1287 8 CFR 280.53(c)(9) (INA section 257).	$16,000	$10,000 (1990)	1.78156	$17,816	$17,816
Penalties for failure to prevent the unauthorized landing of aliens.	8 U.S.C. § 1321(a) 8 CFR 280.53(c)(10) (INA section 271(a)).	$4,300	$3,000 (1990)	1.78156	$5,345	$5,345
Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.	8 U.S.C. § 1322(a) 8 CFR 280.53(c)(11) (INA section 272(a)).	$4,300	$3,000 (1990)	1.78156	$5,345	$5,345
Penalties for bringing to the United States aliens without required documentation.	8 U.S.C. § 1323(b) 8 CFR 280.53(c)(12) (INA section 273(b)).	$4,300	$3,000 (1990)	1.78156	$5,345	$5,345
Penalties for failure to depart.	8 U.S.C. 1324d 8 CFR 280.53(c)(13) (INA section 274D).	$550	$500 (1996)	1.50245	$751	$751
Penalties for improper entry.	8 U.S.C. § 1325(b) 8 CFR 280.53(c)(14) (INA section 275(b)).	$55–275	$50–$250 (1996)	1.50245	$75–$376	$75–$376

* The amount of the penalty and the year of when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

** OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016.

C. Immigration and Customs Enforcement

Immigration and Customs Enforcement (ICE) assesses civil monetary penalties for certain employment-related violations arising from the INA. ICE's civil penalties are located in title 8 of the CFR.

There are three different sections in the INA that impose civil monetary penalties for violations of the laws that relate to employment actions (sections 274A, 274B, and 274C). ICE has primary enforcement responsibilities for two of these civil penalty provisions (sections 274A and 274C), and the Department of Justice (DOJ) has enforcement responsibilities for one of these civil penalty provisions (section 274B). The INA, in sections 274A and 274C, provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I–9, Employment Eligibility Verification) and the employment of unauthorized aliens. These penalties cover, among other things, the knowing employment of unauthorized aliens and the failure to comply with the employment verification requirements relating to completion of the Form I–9. ICE assesses and imposes civil monetary penalties with respect to employer sanctions under section 274A of the INA and 8 CFR part 274a. Similarly, ICE imposes civil penalties for specified actions relating to immigration-related document fraud under section 274C of the INA and 8 CFR part 270. We note that while ICE is updating the penalty amounts in 8 CFR part 270, ICE has not assessed these penalties in recent years.

Because both DHS and DOJ implement the three employment-related penalty sections in the INA, both Departments are codifying the civil penalty amounts in their implementing regulations. Pursuant to the authority of the Inflation Adjustment Act and before the creation of DHS, DOJ previously adjusted the civil monetary penalties for inflation, increasing the specific amounts stated in sections 274A, 274B, and 274C of the INA. See 64 FR 7066 (Feb. 12, 1999) and 64 FR 47099 (Aug. 30, 1999). Both agencies issued a joint rulemaking to update the penalties in 2008. See 73 FR 10130 (Feb. 26, 2008). Today, as in 2008, the division of responsibilities between the Secretary of Homeland Security and the Attorney General requires action by both Departments in order to effectuate a further adjustment of the civil penalties. The minimum and maximum civil penalty amounts for each violation will necessarily be the same whether DHS or DOJ imposes the penalty. See 8 CFR 274a.10 and 270.3; 28 CFR 68.52(c) and (e).

In this rule, DHS is amending 8 CFR parts 270 and 274a of the DHS regulations to incorporate the revised schedule of civil penalties, as adjusted for inflation according to the statutory formula described above. We note that DOJ is similarly revising regulations in 28 CFR part 68 (which correspond to the penalties in 8 CFR part 270) in a separate civil penalty adjustment rulemaking.

Under this rule, the current penalties continue to be applicable with regard to violations that occurred on or before November 2, 2015, the date of enactment of the 2015 Act. Table 3 below lays out the changes to the penalties, where the associated violations occurred after November 2, 2015.

TABLE 3—IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Current penalty	Baseline penalty* (year)	Multiplier**	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Civil penalties for violation of Immigration and Naturalization Act (INA) sections 274C(a)(1)–(a)(4), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(A)	$375–$3,200	$250–$2,000 (1990)	1.78156	$445–$3,563	$445–$3,563
Civil penalties for violation of Immigration and Naturalization Act (INA) sections 274C(a)(5)–(a)(6), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(B)	$275–$2,200	$250–$2,000 (1996)	1.50245	$376–$3,005	$376–$3,005
Civil penalties for violation of Immigration and Naturalization Act (INA) sections 274C(a)(1)–(a)(4), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(C)	$3,200–$6,500	$2,000–$5,000 (1990)	1.78156	$3,563–$8,908	$3,563–$8,908
Civil penalties for violation of Immigration and Naturalization Act (INA) sections 274C(a)(5)–(a)(6), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(D)	$2,200–$5,500	$2,000–$5,000 (1996)	1.50245	$3,005–$7,512	$3,005–$7,512
Violation/prohibition of indemnity bonds	8 CFR 274a.8(b)	$1,100	$1,000 (1986)	2.15628	$2,156	$2,156
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens—Penalty for first offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(A)	$375–$3,200	$250–$2,000 (1986)	2.15628	$539–$4,313	$539–$4,313
Penalty for second offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(B)	$3,200–$6,500	$2,000–$5,000 (1986)	2.15628	$4,313–$10,781	$4,313–$10,781
Penalty for third or subsequent offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(C)	$4,300–$16,000	$3,000–$10,000 (1986)	2.15628	$6,469–$21,563	$6,469–$21,563
Civil penalties for I–9 paperwork violations	8 CFR 274a.10(b)(2)	$110–$1,100	$100–$1,000 (1986)	2.15628	$216–$2,156	$216–$2,156

* The amount of the penalty and the year of when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

** OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016.

D. U.S. Coast Guard

The Coast Guard is adjusting for inflation the penalties in the table in part 27 of title 33 of the CFR. That table identifies the statutes that provide the Coast Guard with civil monetary penalty authority and sets out the inflation-adjusted maximum penalty that the Coast Guard may impose pursuant to each statutory provision. The new table in this regulation provides the current maximum penalty for violations that occurred after November 2, 2015. The penalties in effect for violations on or prior to November 2, 2015 can be found in prior CFR versions that pertain to the date in which the violation occurred. Since the Coast Guard had adjusted the table in part 27 for inflation on several occasions, not just one table can be used for all violations on or before November 2, 2015.

The Coast Guard is authorized to assess close to 150 penalties involving maritime safety and security and environmental stewardship that are critical to the continued success of Coast Guard missions. Various statutes in Title 14, 16, 19, 33, 42, 46, and 49 of the U.S.C. authorize these penalties. Titles 33 and 46 authorize the vast majority of these penalties as these statutes deal with navigation, navigable waters, and shipping.

Under title 33 of the U.S.C., the Coast Guard assesses penalties with respect to bridges, marine events, pollution prevention, oil discharges, sanitation, international navigation, and other environmental stewardship responsibilities. Most notably, the Coast Guard has express joint authority with the Environmental Protection Agency (EPA) to assess penalties in order to enforce the Federal Water Pollution Control Act (Clean Water Act) (CWA), as amended by the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 1321 *et seq.*), and MARPOL Protocol, Annex VI (33 U.S.C. 1908). Penalties under the CWA and OPA 90 relate to the discharge of oil or a hazardous substance from a vessel or facility into or upon the navigable waters of the United States, adjoining shoreline, or into or upon the waters of the contiguous zone. Both agencies may assess penalties for discharges of oil or hazardous substances in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act. Further, both agencies may assess penalties if a person fails to take mitigation or removal action, or fails to comply with an order of the Federal On-Scene Coordinator. The Coast Guard and EPA delineate enforcement boundaries within each region. Under the Act to Prevent Pollution from Ships (APPS) (33 U.S.C. 1901 *et seq.*), both of these agencies may assess penalties for any violation of Annex VI, including but not limited to the carriage and use of low-sulfur fuel oil, and vessel engine and emission requirements. While the EPA focuses primarily on engine permit requirements and shoreside facility compliance, the Coast Guard may refer other matters to the EPA for enforcement in accordance with established protocol.

Under title 46 of the U.S.C., the Coast Guard assesses penalties with respect to vessel inspections, vessel operations, manning and training on vessels, marine casualty reporting, drug testing, pilotage, vessel identification, and other aspects of personnel and operations involved in the shipping industry. The majority of civil penalties under this title relate to vessel compliance, which includes general inspection requirements, crew requirements and limitations, and operational requirements of the vessel to engage in a commercial enterprise.

Beyond title 33 and title 46 of the U.S.C., the Coast Guard assesses penalties related to the organization and management of the Coast Guard, aquatic species conservation, obstruction of revenue, and hazardous substances and materials. Most notably, the Coast Guard has joint authority with EPA under title 42 of the U.S.C. to assess penalties for hazardous substances. Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et seq.*), the Coast Guard may assess penalties for the failure to meet the notification requirements, failure to provide evidence of financial responsibility, or failure to follow an administrative order, among other violations. The Coast Guard has the primary responsibility to enforce the laws on navigational waterways.

As evidenced by the table below, the current inflation adjustment imposes a substantial change in many of the civil penalties administered by the Coast Guard. Part of the reason for the changes are that the enactment dates for penalties assessed by the Coast Guard vary widely, spanning from 1935 to 2014. Furthermore, the penalty amounts vary widely, spanning up to $250,000. Under the 2015 Act, and as mentioned elsewhere in this preamble, Congress has created a straightforward method for calculating the amount of the inflation allowable for each penalty.

While the increases due to inflation are, for some penalties, substantial, not all penalties will be equivalent to their original value in real terms. Pursuant to the 2015 Act, the Coast Guard cannot increase any penalty by more than 150% of the previously adjusted penalty. As the Coast Guard last adjusted penalties for inflation on June 2, 2011 (76 FR 31831), it cannot adjust any penalty by more than 150% of the amount set by the final rule of June 2, 2011. After the Coast Guard used the new method and applied the 150% cap, they increased the penalties by an amount of 3% to 150% above the last adjustment. Of those penalties that the Coast Guard is increasing in this rulemaking, approximately 23 of the penalties are increasing more than 100% from their 2011 value, and the 2015 Act limits the amount that they can increase to 150% of the 2011 value. All of the penalties that Congress or the Coast Guard enacted prior to 1980 are increasing more than 100%. This is due to the great difference between the CPI–U level from the years enacted and the CPI–U from October 2015.

There were three penalties that decreased in value from their previous amounts. These penalties (codified in 46 U.S.G. App. 1505(a)(2), 46 U.S.C. App. 1805(c)(2), and 42 U.S.C. 12151(c)) showed significant decreases. These changes occurred because Congress recodified these penalties in 2006 after the Coast Guard adjusted them for inflation. Using the 2006 recodification as the new statutory baseline, the penalty amounts declined significantly in this rulemaking from their current values.

Finally, we are adding several penalties to the existing table in 33 CFR 27.3 that had been inadvertently omitted from regulatory text. These penalties include a penalty for intentional interference with a broadcast (codified at 14 U.S.C. 88(e)), a clean hulls penalty for recreational and commercial vessels (33 U.S.C. 3852(c)), vessel documentation relating to mobile offshore drilling units (46 U.S.C. 12151(a)(2), and hazardous material training penalties (49 U.S.C. 5123(a)(3)).

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Current penalty	Baseline penalty * (year) (statutory citation)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Saving Life and Property	14 U.S.C. 88(c)	$10,000	$10,000 (2014) (Pub. L. 113–281)	1.00171	$10,017	$10,017
Saving Life and Property; Intentional Interference with Broadcast.	14 U.S.C. 88(e)	1,000	$1,000 (2012) (Pub. L. 112–213)	1.02819	1,028	1,028
Confidentiality of Medical Quality Assurance Records (first offense).	14 U.S.C. 645(i); 33 CFR 27.3.	4,000	$3,000 (1992) (Pub. L. 102–587)	1.67728	5,032	5,032
Confidentiality of Medical Quality Assurance Records (subsequent offenses).	14 U.S.C. 645(i); 33 CFR 27.3.	30,000	$20,000 (1992) (Pub. L. 102–587)	1.67728	33,546	33,546
Aquatic Nuisance Species in Waters of the United States.	16 U.S.C. 4711(g)(1); 33 CFR 27.3.	35,000	$25,000 (1996) (Pub. L. 104–332)	1.50245	37,561	37,561
Obstruction of Revenue Officers by Masters of Vessels.	19 U.S.C. 70; 33 CFR 27.3.	3,000	$2,000 (1935)	17.36044	34,721	7,500
Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	19 U.S.C. 70; 33 CFR 27.3.	700	$500 (1935)	17.36044	8,680	1,750
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	19 U.S.C. 1581(d)	5,000	$5,000 (1930)	N/A	N/A	*** 5,000
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty.	19 U.S.C. 1581(d)	1,000	$1,000 (1930)	N/A	N/A	*** 1,000
Anchorage Ground/Harbor Regulations General.	33 U.S.C. 471; 33 CFR 27.3.	110	$10,000 (2010) (Pub. L. 111–281)	1.08745	10,875	10,875
Anchorage Ground/Harbor Regulations St. Mary's river.	33 U.S.C. 474; 33 CFR 27.3.	300	$200 (1946) (11 FR 7875)	11.43452	2,287	750
Bridges/Failure to Comply with Regulations	33 U.S.C. 495(b); 33 CFR 27.3.	25,000	$25,000 (2008) (Pub. L. 108–293)	1.09819	27,455	27,455
Bridges/Drawbridges	33 U.S.C. 499(c); 33 CFR 27.3.	25,000	$25,000 (2008) (Pub. L. 108–293)	1.09819	27,455	27,455
Bridges/Failure to Alter Bridge Obstructing Navigation.	33 U.S.C. 502(c); 33 CFR 27.3.	25,000	$25,000 (2008) (Pub. L. 108–293)	1.09819	27,455	27,455
Bridges/Maintenance and Operation	33 U.S.C. 533(b); 33 CFR 27.3.	25,000	$25,000 (2008) (Pub. L. 108–293)	1.09819	27,455	27,455
Bridge to Bridge Communication; Master, Person in Charge or Pilot.	33 U.S.C. 1208(a); 33 CFR 27.3.	800	$500 (1971) (Pub. L. 92–63)	5.81511	2,908	2,000
Bridge to Bridge Communication; Vessel	33 U.S.C. 1208(b); 33 CFR 27.3.	800	$500 (1971) (Pub. L. 92–63)	5.81511	2,908	2,000
PWSA Regulations	33 U.S.C. 1232(a); 33 CFR 27.3.	40,000	$25,000 (1978) (Pub. L. 95–474)	3.54453	88,613	88,613
Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	33 U.S.C. 1236(b); 33 CFR 27.3.	8,000	$5,000 (1990) (Pub. L. 101–380)	1.78156	8,908	8,908
Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	33 U.S.C. 1236(c); 33 CFR 27.3.	8,000	$5,000 (1990) (Pub. L. 101–380)	1.78156	8,908	8,908
Vessel Navigation: Regattas or Marine Parades; Other Persons.	33 U.S.C. 1236(d); 33 CFR 27.3.	3,000	$2,500 (1990) (Pub. L. 101–380)	1.78156	4,454	4,454

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty * (year) (statutory citation)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Oil/Hazardous Substances: Discharges (Class I per violation).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Oil/Hazardous Substances: Discharges (Class I total under paragraph).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	40,000	$25,000 (1990) (Pub. L. 101–380)	1.78156	44,539	44,539
Oil/Hazardous Substances: Discharges (Class II per day of violation).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Oil/Hazardous Substances: Discharges (Class II total under paragraph).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	190,000	$125,000 (1990) (Pub. L. 101–380)	1.78156	222,695	222,695
Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	40,000	$25,000 (1990) (Pub. L. 101–380)	1.78156	44,539	44,539
Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	1,100	$1,000 (1990) (Pub. L. 101–380)	1.78156	1,782	1,782
Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	33 U.S.C. 1321(b)(7)(B); 33 CFR 27.3.	40,000	$25,000 (1990) (Pub. L. 101–380)	1.78156	44,539	44,539
Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	33 U.S.C. 1321(b)(7)(C); 33 CFR 27.3.	40,000	$25,000 (1990) (Pub. L. 101–380)	1.78156	44,539	44,539
Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	4,000	$3,000 (1990) (Pub. L. 101–380)	1.78156	5,345	5,345
Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	130,000	$100,000 (1990) (Pub. L. 101–380)	1.78156	178,156	178,156
Marine Sanitation Devices; Operating	33 U.S.C. 1322(j); 33 CFR 27.3.	3,000	$2,000 (1972) (Pub. L. 92–500)	5.62265	11,245	7,500
Marine Sanitation Devices; Sale or Manufacture.	33 U.S.C. 1322(j); 33 CFR 27.3.	8,000	$5,000 (1972) (Pub. L. 92–500)	5.62265	28,113	20,000
International Navigation Rules; Operator	33 U.S.C. 1608(a); 33 CFR 27.3.	8,000	$5,000 (1980) (Pub. L. 96–591)	2.80469	14,023	14,023
International Navigation Rules; Vessel	33 U.S.C. 1608(b); 33 CFR 27.3.	8,000	$5,000 (1980) (Pub. L. 96–591)	2.80469	14,023	14,023
Pollution from Ships; General	33 U.S.C. 1908(b)(1); 33 CFR 27.3.	40,000	$25,000 (1980) (Pub. L. 96–478)	2.80469	70,117	70,117
Pollution from Ships; False Statement	33 U.S.C. 1908(b)(1); 33 CFR 27.3.	8,000	$5,000 (1980) (Pub. L. 96–478)	2.80469	14,023	14,023
Inland Navigation Rules; Operator	33 U.S.C. 2072(a); 33 CFR 27.3.	8,000	$5,000 (1980) (Pub. L. 96–591)	2.80469	14,023	14,023
Inland Navigation Rules; Vessel	33 U.S.C. 2072(b); 33 CFR 27.3.	8,000	$5,000 (1980) (Pub. L. 96–591)	2.80469	14,023	14,023
Shore Protection; General	33 U.S.C. 2609(a); 33 CFR 27.3.	40,000	$25,000 (1988) (Pub. L. 100–688)	1.97869	49,467	49,467
Shore Protection; Operating Without Permit.	33 U.S.C. 2609(b); 33 CFR 27.3.	15,000	$10,000 (1988) (Pub. L. 100–688)	1.97869	19,787	19,787
Oil Pollution Liability and Compensation	33 U.S.C. 2716a(a); 33 CFR 27.3.	40,000	$25,000 (1990) (Pub. L. 101–380)	1.78156	44,539	44,539

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty * (year) (statutory citation)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Clean Hulls	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	37,500	$37,500 (2010) (Pub. L. 111–281)	1.08745	40,779	40,779
Clean Hulls—related to false statements	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	50,000	$50,000 (2010) (Pub. L. 111–281)	1.08745	54,373	54,373
Clean Hulls—Recreational Vessel	33 U.S.C. 3852(c); 33 CFR 27.3.	5,000	$5,000 (2010) (Pub. L. 111–281)	1.08745	5,437	5,437
Hazardous Substances, Releases, Liability, Compensation (Class I).	42 U.S.C. 9609(a); 33 CFR 27.3.	35,000	$25,000 (1986) (Pub. L. 99–499)	2.15628	53,907	53,907
Hazardous Substances, Releases, Liability, Compensation (Class II).	42 U.S.C. 9609(b); 33 CFR 27.3.	35,000	$25,000 (1986) (Pub. L. 99–499)	2.15628	53,907	53,907
Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	42 U.S.C. 9609(b); 33 CFR 27.3.	100,000	$75,000 (1986) (Pub. L. 99–499)	2.15628	161,721	161,721
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	42 U.S.C. 9609(c); 33 CFR 27.3.	35,000	$25,000 (1986) (Pub. L. 99–499)	2.15628	53,907	53,907
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	42 U.S.C. 9609(c); 33 CFR 27.3.	100,000	$75,000 (1986) (Pub. L. 99–499)	2.15628	161,721	161,721
Safe Containers for International Cargo	46 U.S.C. App 1505(a)(2) (codified as 46 USC 80509); 33 CFR 27.3.	8,000	$5,000 (2006) (Pub. L. 109–304)	1.17858	5,893	5,893
Suspension of Passenger Service	46 U.S.C. App 1805(c)(2) (codified 46 USC 70305); 33 CFR 27.3.	70,000	$50,000 (2006) (Pub. L. 109–304; 46 USC 70305)	1.17858	58,929	58,929
Vessel Inspection or Examination Fees	46 U.S.C. 2110(e); 33 CFR 27.3.	8,000	$5,000 (1990) (Pub. L. 101–508)	1.78156	8,908	8,908
Alcohol and Dangerous Drug Testing	46 U.S.C. 2115; 33 CFR 27.3.	7,000	$5,000 (1998) (Pub. L. 105–383)	1.45023	7,251	7,251
Negligent Operations: Recreational Vessels.	46 U.S.C. 2302(a); 33 CFR 27.3.	6,000	$5,000 (2002) (Pub. L. 107–295)	1.31185	6,559	6,559
Negligent Operations: Other Vessels	46 U.S.C. 2302(a); 33 CFR 27.3.	30,000	$25,000 (2002) (Pub. L. 107–295)	1.31185	32,796	32,796
Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	46 U.S.C. 2302(c)(1); 33 CFR 27.3.	7,000	$5,000 (1998) (Pub. L. 105–383)	1.45023	7,251	7,251
Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	46 U.S.C. 2306(a)(4); 33 CFR 27.3.	8,000	$5,000 (1984) (Pub. L. 98–498)	2.25867	11,293	11,293
Vessel Reporting Requirements: Master	46 U.S.C. 2306(b)(2); 33 CFR 27.3.	1,100	$1,000 (1984) (Pub. L. 98–498)	2.25867	2,259	2,259
Immersion Suits	46 U.S.C. 3102(c)(1); 33 CFR 27.3.	8,000	$5,000 (1984) (Pub. L. 98–623)	2.25867	11,293	11,293
Inspection Permit	46 U.S.C. 3302(i)(5); 33 CFR 27.3.	1,100	$1,000 (1983) (Pub. L. 98–89)	2.35483	2,355	2,355
Vessel Inspection; General	46 U.S.C. 3318(a); 33 CFR 27.3.	8,000	$5,000 (1984) (Pub. L. 98–498)	2.25867	11,293	11,293
Vessel Inspection; Nautical School Vessel	46 U.S.C. 3318(g); 33 CFR 27.3.	8,000	$5,000 (1984) (Pub. L. 98–498)	2.25867	11,293	11,293
Vessel Inspection; Failure to Give Notice IAW 3304(b).	46 U.S.C. 3318(h); 33 CFR 27.3.	1,100	$1,000 (1984) (Pub. L. 98–498)	2.25867	2,259	2,259

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty * (year) (statutory citation)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Vessel Inspection; Failure to Give Notice IAW 3309(c).	46 U.S.C. 3318(i); 33 CFR 27.3.	1,100	$1,000 (1984) (Pub. L. 98–498)	2.25867	2,259	2,259
Vessel Inspection; Vessel ≥1600 Gross Tons.	46 U.S.C. 3318(j)(1); 33 CFR 27.3.	15,000	$10,000 (1984) (Pub. L. 98–498)	2.25867	22,587	22,587
Vessel Inspection; Vessel <1600 Gross Tons.	46 U.S.C. 3318(j)(1); 33 CFR 27.3.	3,000	$2,000 (1984) (Pub. L. 98–498)	2.25867	4,517	4,517
Vessel Inspection; Failure to Comply with 3311(b).	46 U.S.C. 3318(k); 33 CFR 27.3.	15,000	$10,000 (1984) (Pub. L. 98–498)	2.25867	22,587	22,587
Vessel Inspection; Violation of 3318(b)–3318(f).	46 U.S.C. 3318(l); 33 CFR 27.3.	8,000	$5,000 (1984) (Pub. L. 98–498)	2.25867	11,293	11,293
List/count of Passengers	46 U.S.C. 3502(e); 33 CFR 27.3.	110	$100 (1983) (Pub. L. 98–89)	2.35483	235	235
Notification to Passengers	46 U.S.C. 3504(c); 33 CFR 27.3.	15,000	$10,000 (1983) (Pub. L. 98–89)	2.35483	23,548	23,548
Notification to Passengers; Sale of Tickets	46 U.S.C. 3504(c); 33 CFR 27.3.	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Copies of Laws on Passenger Vessels; Master.	46 U.S.C. 3506; 33 CFR 27.3.	300	$200 (1983) (Pub. L. 98–89)	2.35483	471	471
Liquid Bulk/Dangerous Cargo	46 U.S.C. 3718(a)(1); 33 CFR 27.3.	40,000	$25,000 (1983) (Pub. L. 98–89)	2.35483	58,871	58,871
Uninspected Vessels	46 U.S.C. 4106; 33 CFR 27.3.	8,000	$5,000 (1988) (Pub. L. 100–540)	1.97869	9,893	9,893
Recreational Vessels (maximum for related series of violations).	46 U.S.C. 4311(b)(1); 33 CFR 27.3.	300,000	$250,000 (2004) (Pub. L. 108–293)	1.24588	311,470	311,470
Recreational Vessels; Violation of 4307(a)	46 U.S.C. 4311(b)(1); 33 CFR 27.3.	6,000	$5,000 (2004) (Pub. L. 108–293)	1.24588	6,229	6,229
Recreational vessels	46 U.S.C. 4311(c); 33 CFR 27.3.	1,100	$1,000 (1983) (Pub. L. 98–89)	2.35483	2,355	2,355
Uninspected Commercial Fishing Industry Vessels.	46 U.S.C. 4507; 33 CFR 27.3.	8,000	$5,000 (1988) (Pub. L. 100–424)	1.97869	9,893	9,893
Abandonment of Barges	46 U.S.C. 4703; 33 CFR 27.3.	1,100	$1,000 (1992) (Pub. L. 102–587)	1.67728	1,677	1,677
Load Lines	46 U.S.C. 5116(a); 33 CFR 27.3.	8,000	$5,000 (1986) (Pub. L. 99–509)	2.15628	10,781	10,781
Load Lines; Violation of 5112(a)	46 U.S.C. 5116(b); 33 CFR 27.3.	15,000	$10,000 (1986) (Pub. L. 99–509)	2.15628	21,563	21,563
Load Lines; Violation of 5112(b)	46 U.S.C. 5116(c); 33 CFR 27.3.	8,000	$5,000 (1986) (Pub. L. 99–509)	2.15628	10,781	10,781
Reporting Marine Casualties	46 U.S.C. 6103(a); 33 CFR 27.3.	35,000	$25,000 (1996) (Pub. L. 104–324)	1.50245	37,561	37,561
Reporting Marine Casualties; Violation of 6104.	46 U.S.C. 6103(b); 33 CFR 27.3.	8,000	$5,000 (1988) (Pub. L. 100–424)	1.97869	9,893	9,893
Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	46 U.S.C. 8101(e); 33 CFR 27.3.	1,100	$1,000 (1990) (Pub. L. 101–380)	1.78156	1,782	1,782

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty * (year) (statutory citation)	Multiplier **	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Manning of Inspected Vessels	46 U.S.C. 8101(f); 33 CFR 27.3.	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG.	46 U.S.C. 8101(g); 33 CFR 27.3.	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	46 U.S.C. 8101(h); 33 CFR 27.3.	1,100	$1,000 (1983) (Pub. L. 98–89)	2.35483	2,355	2,355
Watchmen on Passenger Vessels	46 U.S.C. 8102(a)	1,100	$1,000 (1983) (Pub. L. 98–89)	2.35483	2,355	2,355
Citizenship Requirements	46 U.S.C. 8103(f)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Watches on Vessels; Violation of 8104(a) or (b).	46 U.S.C. 8104(i)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Watches on Vessels; Violation of 8104(c), (d), (e), or (h).	46 U.S.C. 8104(j)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Staff Department on Vessels	46 U.S.C. 8302(e)	110	$100 (1983) (Pub. L. 98–89)	2.35483	235	235
Officer's Competency Certificates	46 U.S.C. 8304(d)	110	$100 (1983) (Pub. L. 98–89)	2.35483	235	235
Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 8502(e)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Coastwise Pilotage; Individual	46 U.S.C. 8502(f)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Federal Pilots	46 U.S.C. 8503	40,000	$25,000 (1984) (Pub. L. 98–557)	2.25867	56,467	56,467
Merchant Mariners Documents	46 U.S.C. 8701(d)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Crew Requirements	46 U.S.C. 8702(e)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Small Vessel Manning	46 U.S.C. 8906	35,000	$25,000 (1996) (Pub. L. 104–324)	1.50245	37,561	37,561
Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 9308(a)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Pilotage: Great Lakes; Individual	46 U.S.C. 9308(b)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Pilotage: Great Lakes; Violation of 9303	46 U.S.C. 9308(c)	15,000	$10,000 (1990) (Pub. L. 101–380)	1.78156	17,816	17,816
Failure to Report Sexual Offense	46 U.S.C. 10104(b)	8,000	$5,000 (1989) (Pub. L. 101–225)	1.89361	9,468	9,468
Pay Advances to Seamen	46 U.S.C. 10314(a)(2)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Pay Advances to Seamen; Remuneration for Employment.	46 U.S.C. 10314(b)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty* (year) (statutory citation)	Multiplier**	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Allotment to Seamen	46 U.S.C. 10315(c)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Seamen Protection; General	46 U.S.C. 10321	7,000	$5,000 (1993) (Pub. L. 103–206)	1.63238	8,162	8,162
Coastwise Voyages: Advances	46 U.S.C. 10505(a)(2)	7,000	$5,000 (1993) (Pub. L. 103–206)	1.63238	8,162	8,162
Coastwise Voyages: Advances; Remuneration for Employment.	46 U.S.C. 10505(b)	7,000	$5,000 (1993) (Pub. L. 103–206)	1.63238	8,162	8,162
Coastwise Voyages: Seamen Protection; General.	46 U.S.C. 10508(b)	7,000	$5,000 (1993) (Pub. L. 103–206)	1.63238	8,162	8,162
Effects of Deceased Seamen	46 U.S.C. 10711	300	$200 (1983) (Pub. L. 98–89)	2.35483	471	471
Complaints of Unfitness	46 U.S.C. 10902(a)(2)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Proceedings on Examination of Vessel	46 U.S.C. 10903(d)	110	$100 (1983) (Pub. L. 98–89)	2.35483	235	235
Permission to Make Complaint	46 U.S.C. 10907(b)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Accommodations for Seamen	46 U.S.C. 11101(f)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Medicine Chests on Vessels	46 U.S.C. 11102(b)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Destitute Seamen	46 U.S.C. 11104(b)	110	$100 (1983) (Pub. L. 98–89)	2.35483	235	235
Wages on Discharge	46 U.S.C. 11105(c)	800	$500 (1983) (Pub. L. 98–89)	2.35483	1,177	1,177
Log Books; Master Failing to Maintain	46 U.S.C. 11303(a)	300	$200 (1983) (Pub. L. 98–89)	2.35483	471	471
Log Books; Master Failing to Make Entry	46 U.S.C. 11303(b)	300	$200 (1983) (Pub. L. 98–89)	2.35483	471	471
Log Books; Late Entry	46 U.S.C. 11303(c)	200	$150 (1983) (Pub. L. 98–89)	2.35483	353	353
Carrying of Sheath Knives	46 U.S.C. 11506	80	$50 (1983) (Pub. L. 98–89)	2.35483	118	118
Vessel Documentation	46 U.S.C. 12151(a)(1)	15,000	$15,000 (2012) (Pub. L. 112–213)	1.02819	15,423	15,423
Documentation of Vessels—Related to Activities involving mobile offshore drilling units.	46 U.S.C. 12151(a)(2)	25,000	$25,000 (2012) (Pub. L. 112–213)	1.02819	25,705	25,705
Vessel Documentation; Fishery Endorsement.	46 U.S.C. 12151(c)	130,000	$100,000 (2006) (Pub. L. 109–304)	1.17858	117,858	117,858
Numbering of Undocumented Vessels—Willful violation.	46 U.S.C. 12309(a)	6,000	$5,000 (1983) (Pub. L. 98–89)	2.35483	11,774	11,774
Numbering of Undocumented Vessels	46 U.S.C. 12309(b)	1,100	$1,000 (1983) (Pub. L. 98–89)	2.35483	2,355	2,355
Vessel Identification System	46 U.S.C. 12507(b)	15,000	$10,000 (1988) (Pub. L. 100–710)	1.97869	19,787	19,787

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Current penalty	Baseline penalty* (year) (statutory citation)	Multiplier**	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Measurement of Vessels	46 U.S.C. 14701	30,000	$20,000 (1986) (Pub. L. 99–509)	2.15628	43,126	43,126
Measurement; False Statements	46 U.S.C. 14702	30,000	$20,000 (1986) (Pub. L. 99–509)	2.15628	43,126	43,126
Commercial Instruments and Maritime Liens.	46 U.S.C. 31309	15,000	$10,000 (1988) (Pub. L. 100–710)	1.97869	19,787	19,787
Commercial Instruments and Maritime Liens; Mortgagor.	46 U.S.C. 31330(a)(2)	15,000	$10,000 (1988) (Pub. L. 100–710)	1.97869	19,787	19,787
Commercial Instruments and Maritime Liens; Violation of 31329.	46 U.S.C. 31330(b)(2)	35,000	$25,000 (1988) (Pub. L. 100–710)	1.97869	49,467	49,467
Port Security	46 U.S.C. 70119(a)	30,000	$25,000 (2002) (Pub. L. 107–295)	1.31185	32,796	32,796
Port Security—Continuing Violations	46 U.S.C. 70119(b)	50,000	$50,000 (2006) (Pub. L. 109–241)	1.17858	58,929	58,929
Maritime Drug Law Enforcement	46 U.S.C. 70506(c)	5,000	$5,000 (2010) (Pub. L. 111–281)	1.08745	5,437	5,437
Hazardous Materials: Related to Vessels	49 U.S.C. 5123(a)(1)	75,000	$75,000 (2012) (Pub. L. 112–141)	1.02819	77,114	77,114
Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or substantial Damage to Property.	49 U.S.C. 5123(a)(2)	175,000	$175,000 (2012) (Pub. L. 112–141)	1.02819	179,933	179,933
Hazardous Materials: Related to Vessels; Training.	49 U.S.C. 5123(a)(3)	450	$450 (2012) (Pub. L. 112–141)	1.02819	463	463

* The amount of the penalty and the year of when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

** OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016.

*** Exempt as under the Tariff Act.

E. Transportation Security Administration

The Transportation Security Administration (TSA) is updating its civil penalties regulation in accordance with the 2015 Act. Pursuant to its statutory authority in 49 U.S.C. 114(v), TSA may impose penalties for violations of any statute that TSA administers, whether an implementing regulation or order imposes the penalty.[6] TSA assesses these penalties for a wide variety of aviation and surface security requirements, including violations of TSA's requirements applicable to Transportation Worker Identification Credentials (TWIC),[7] as well as violations of requirements described in chapter 449 of Title 49 of the U.S. Code. These penalties can apply to a wide variety of situations, as described in the statutory and regulatory provisions, as well as in guidance that TSA publishes.

TSA's maximum civil penalty amounts are located in 49 CFR 1503.401. Over the years, Congress has increased the amount of those penalties to reflect the importance of maintaining aviation security. In section 1602 of the Homeland Security Act of 2002 (Pub. L. 107–296 (Nov. 25, 2002)), Congress raised the maximum civil penalty amounts per violation for certain aviation security statutes. Additionally, in section 503(b) of the Vision 100—Century of Aviation Reauthorization Act (Vision 100) (Pub. L. 108–176 (Dec. 12, 2003)), Congress raised the total civil penalty amount per case that TSA may assess.

In this rulemaking, we are also making several minor adjustments to the regulatory text in section 1503.401 beyond simply updating the penalty numbers. First, we are eliminating the text in paragraph (d), "Inflation adjustment," because it is no longer needed. Pursuant to the 2015 Act, TSA will carry out inflation adjustments annually in the future, so there is no need for this text. Each year, TSA will update the amounts with current figures per the latest adjustment.

Additionally, TSA is correcting a minor error that appeared in section 1503.401(c). Previously, subsection

---

[6] See 49 U.S.C. 114(v), as amended by sec. 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266 (Aug. 3, 2007)).

[7] See, *e.g.*, 46 U.S.C. 70105, 49 U.S.C. 46302 and 46303, and U.S.C. ch. 449.

(c)(1), which prescribed penalties for certain aviation-related violations, stated that the penalty against an entity that is operating a non-aircraft operator business was limited to $50,000. However, that statement incorrectly applied the limiting provision in 49 U.S.C. 46301(d)(8)(C), which applies the $50,000 limitation (unadjusted for inflation) only to individuals and small businesses. TSA can assess the full amount of $400,000 (adjusted for inflation) against an entity that is not an individual or small business, and operating a non-aircraft operator business who is subject to this fine. We have made this correction by removing the inaccurate clause from paragraph (c)(1) and adding a new paragraph (c)(2) explicitly stating that an entity operating an on-aircraft operator business is subject to the full fine. We are redesignating existing paragraph (c)(2) as (c)(3).

Under this rule, the current penalties continue to be applicable with regard to violations that occurred on or before November 2, 2015, the date of enactment of the 2015 Act. Table 5 below contains a full list of the penalties assessed by the Transportation Security Administration, where the associated violation occurred after November 2, 2015.

TABLE 5—TRANSPORTATION SECURITY ADMINISTRATION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Current penalty	Baseline penalty* (year)	Multiplier**	Preliminary new penalty [multiplier × baseline penalty]	Adjusted new penalty [increase capped at 150% more than current penalty]
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	49 U.S.C. 46301(a)(1), (4); 49 CFR 1503.401(c)(2).	$27,500 (up to a total of $400,000 per civil penalty action).	$25,000 (2003) (up to a total of $400,000 per civil penalty action).	1.28561	$32,140 (up to a total of $514,244 per civil penalty action).	$32,140 (up to a total of $514,244 per civil penalty action).
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	49 U.S.C. 46301(a)(1), (4); 49 CFR 1503.401(c)(1).	$11,000 (up to a total of $50,000 total for small businesses, $400,000 for others).	$10,000 (2003) (up to a total of $50,000 total for small businesses, $400,000 for others).	1.28561	$12,856 (up to a total of $64,281 total for small businesses, $514,244 for others).	$12,856 (up to a total of $64,281 total for small businesses, $514,244 for others).
Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued thereunder.	49 U.S.C. 114(v); 49 CFR 1503.401(b).	$10,000 (up to a total of $50,000 total for small businesses, $400,000 for others).	$10,000 (2009) (up to a total of $50,000 total for small businesses, $400,000 for others).	1.10020	$11,002 (up to a total of $55,010 total for small businesses, $440,080 for others).	$11,002 (up to a total of $55,010 total for small businesses, $440,080 for others).

* The amount of the penalty and the year of when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

** OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016.

III. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and to provide interested persons with the opportunity to submit comments (5 U.S.C. 553(c)). The APA, however, provides an exception to the notice and public comment requirements where the "agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest." 5 U.S.C. 553(b)(B).

DHS is promulgating this rule to ensure that the amount of civil penalties that DHS assesses or enforces reflects the statutorily mandated ranges as adjusted for inflation. Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to issue this rule without prior public notice or opportunity for public comment, because it would be impracticable and unnecessary. The 2015 Act directed agencies to "adjust civil monetary penalties through an interim final rulemaking" and to make subsequent annual adjustments for inflation to civil monetary penalties notwithstanding section 553 of title 5 of the U.S. Code. In addition, the 2015 Act provides a clear formula for adjustment of the civil penalties, leaving DHS and its components with little room for discretion. DHS and its components have been charged only with performing ministerial computations to determine the amounts of adjustments for inflation to civil monetary penalties. Accordingly, prior public notice and comment are not required for this rule.

IV. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this rule.

This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guidance.[8] DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this interim final rule, because a notice of proposed rulemaking is not required for the reasons stated above.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This interim final rule will not result in such an expenditure.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this interim final rule does not trigger any new or revised recordkeeping or reporting.

List of Subjects

6 CFR Part 27

Reporting and recordkeeping requirements, Security measures.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

33 CFR Part 27

Administrative practice and procedure, Penalties.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

Amendments to the Regulations

For the reasons stated in the preamble, the Department of Homeland Security amends 6 CFR part 27, 8 CFR parts 270, 274a, and 280, 33 CFR part 27, and 49 CFR part 1503 as follows:

Title 6—Domestic Security

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

■ 1. The authority citation for part 27 is revised to read as follows:

Authority: 6 U.S.C. 624; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 27.300, revise paragraph (b)(3) to read as follows:

§ 27.300 Orders.

* * * * *

(b) * * *

(3) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section and issues an Order Assessing Civil Penalty pursuant to paragraph (b)(1) of this section, a chemical facility is liable to the United States for a civil penalty of not more than $25,000 for each day during which the violation continues, if the violation of the Order occurred on or before November 2, 2015, or $32,796 for each day during which the violation of the Order continues, if the violation occurred after November 2, 2015.

* * * * *

Title 8—Aliens and Nationality

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 3. The authority citation for part 270 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321 and Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 270.3, revise paragraphs (b)(1)(ii)(A), (B), (C), and (D) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *First offense under section 274C(a)(1) through (a)(4).* Not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act on or after March 27, 2008 and on or before November 2, 2015; and not less than $445 and not exceeding $3,563 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(B) *First offense under section 274C(a)(5) or (a)(6).* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act on or after March 27, 2008 and on or before November 2, 2015; and not less than $376 and not exceeding $3,005 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

(C) *Subsequent offenses under section 274C(a)(1) through (a)(4).* Not less than $2,200 and not more than $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $3,200 and not exceeding $6,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $3,563 and not more than $8,908 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(D) *Subsequent offenses under section 274C(a)(5) or (a)(6).* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $2,200 and not exceeding $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $3,005 and not more than $7,512 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

---

[8] OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 24 February 2016. *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 6. In § 4a.8, revise (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, of $1,100 for each violation occurring on or after September 29, 1999 but on or before November 2, 2015, and of $2,156 for each violation occurring after November 2, 2015, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

■ 7. In § 274a.10, revise paragraphs (b)(1)(ii)(A),(B),(C), and (b)(1)(iii)(2) to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) First offense—not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008; not less than $375 and not exceeding $3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $539 and not more than $4,313 for each unauthorized alien with respect to whom the offense occurred occurring after November 2, 2015.

(B) Second offense—not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008; not less than $3,200 and not more than $6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008 and on or before November 2, 2015; and not less than $4,313 and not more than $10,781 for each unauthorized alien with respect to whom the second offense occurred after November 2, 2015; or

(C) More than two offenses—not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008; not less than $4,300 and not exceeding $16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008 and on or before November 2, 2015; and not less than $6,469 and not more than $21,563 for each unauthorized alien with respect to whom the third or subsequent offense occurred after November 2, 2015; and

(iii) * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999; not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999 and on or before November 2, 2015; and not less than $216 and not more than $2,156 for each individual with respect to whom such violation occurred after November 2, 2015. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

■ 8. The authority citation for part 280 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 9. Revise § 280.53 to read as follows:

§ 280.53 Civil Monetary Penalties Inflation Adjustment.

(a) *Statutory authority.* In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, Sec. 701, 129 Stat. 599, the civil monetary penalties listed in paragraph (b) of this section are adjusted as provided in this paragraph (b).

(b) *Adjustment of penalties.* For violations occurring on or before November 2, 2015, the penalty amount prior to adjustment applies. For violations occurring after November 2, 2015, the listed penalties are adjusted as follows:

(1) Section 231(g) of the Act, Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: From $1,100 to $1,312.

(2) Section 234 of the Act, Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: From $3,200 to $3,563.

(3) Section 240B(d) of the Act, Penalties for failure to depart voluntarily: From $1,100 minimum/ $5,500 maximum to $1,502 minimum/ $7,512 maximum.

(4) Section 243(c)(1)(A) of the Act, Penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act: From $2,200 to $3,005;

(5) Penalties for failure to remove alien stowaways under section 241(d)(2): From $5,500 to $7,512.

(6) Section 251(d) of the Act, Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the Act: From $320 to $356; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: From $7,500 to $8,908.

(7) Section 254(a) of the Act, Penalties for failure to control, detain, or remove alien crewmen: From $750 minimum/ $4,300 maximum to $891 minimum/ $5,345 maximum.

(8) Section 255 of the Act, Penalties for employment on passenger vessels of

aliens afflicted with certain disabilities: From $1,100 to $1,782.

(9) Section 256 of the Act, Penalties for discharge of alien crewmen: From $1,500 minimum/$4,300 maximum to $2,672 minimum/$5,345 maximum.

(10) Section 257 of the Act, Penalties for bringing into the United States alien crewmen with intent to evade immigration laws: From $16,000 maximum to $17,816 maximum.

(11) Section 271(a) of the Act, Penalties for failure to prevent the unauthorized landing of aliens: From $4,300 to $5,345.

(12) Section 272(a) of the Act, Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: From $4,300 to $5,345.

(13) Section 273(b) of the Act, Penalties for bringing to the United States aliens without required documentation: From $4,300 to $5,345.

(14) Section 274D of the Act, Penalties for failure to depart: From $550 to $751, for each day the alien is in violation.

(15) Section 275(b) of the Act, Penalties for improper entry: From $55 minimum/$275 maximum to $75 minimum/$376 maximum, for each entry or attempted entry.

Title 33—Navigation and Navigable Waters

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 10. The authority citation for part 27 continues to read as follows:

Authority: Secs. 1–6, Public Law 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Public Law 104–134, as amended by Public Law 114–74; 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 11. Revise § 27.3 to read as follows:

§ 27.3 Penalty adjustment table.

Table 1 identifies the statutes administered by the Coast Guard that authorize a civil monetary penalty. The "adjusted maximum penalty" is the maximum penalty authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as determined by the Coast Guard. The adjusted civil penalty amounts listed in Table 1 are applicable for penalty assessments issued after August 1, 2016, with respect to violations occurring after November 2, 2015. The applicable civil penalty amounts for violations occurring on or before November 2, 2015, are set forth in previously published regulations amending 33 CFR part 27.

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	2016 adjusted maximum penalty amount ($)
14 U.S.C. 88(c)	Saving Life and Property	10,017
14 U.S.C. 88(e)	Saving Life and Property; Intentional Interference with Broadcast	1,028
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense)	5,032
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	33,546
16 U.S.C. 4711(g)(1)	Aquatic Nuisance Species in Waters of the United States	37,561
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	7,500
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	1,750
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge[1]	5,000
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty[1].	1,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	10,875
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	750
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	27,455
33 U.S.C. 499(c)	Bridges/Drawbridges	27,455
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation	27,455
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	27,455
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot	2,000
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	2,000
33 U.S.C. 1232(a)	PWSA Regulations	88,613
33 U.S.C. 1236(b)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	8,908
33 U.S.C. 1236(c)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	8,908
33 U.S.C. 1236(d)	Vessel Navigation: Regattas or Marine Parades; Other Persons	4,454
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	17,816
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	44,539
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	17,816
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	222,695
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	44,539
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	1,782
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	44,539
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	44,539
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	5,345
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	178,156
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	7,500
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	20,000
33 U.S.C. 1608(a)	International Navigation Rules; Operator	14,023
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	14,023

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	2016 adjusted maximum penalty amount ($)
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	70,117
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	14,023
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	14,023
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	14,023
33 U.S.C. 2609(a)	Shore Protection; General	49,467
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	19,787
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	44,539
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; Civil Enforcement	40,779
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; related to false statements	54,373
33 U.S.C. 3852(c)	Clean Hulls; Recreational Vessels	5,437
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	53,907
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	53,907
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense)	161,721
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	53,907
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	161,721
46 U.S.C. 80509(a)	Safe Containers for International Cargo	5,893
46 U.S.C. 70305(c)	Suspension of Passenger Service	58,929
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	8,908
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	7,251
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	6,559
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	32,796
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	7,251
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	11,293
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	2,259
46 U.S.C. 3102(c)(1)	Immersion Suits	11,293
46 U.S.C. 3302(i)(5)	Inspection Permit	2,355
46 U.S.C. 3318(a)	Vessel Inspection; General	11,293
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	11,293
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice IAW 3304(b)	2,259
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c)	2,259
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥1600 Gross Tons	22,587
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel <1600 Gross Tons	4,517
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	22,587
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)–3318(f)	11,293
46 U.S.C. 3502(e)	List/Count of Passengers	235
46 U.S.C. 3504(c)	Notification to Passengers	23,548
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	1,177
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	471
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	58,871
46 U.S.C. 4106	Uninspected Vessels	9,893
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	311,470
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	6,229
46 U.S.C. 4311(c)	Recreational Vessels	2,355
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	9,893
46 U.S.C. 4703	Abandonment of Barges	1,677
46 U.S.C. 5116(a)	Load Lines	10,781
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	21,563
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	10,781
46 U.S.C. 6103(a)	Reporting Marine Casualties	37,561
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	9,893
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement	1,782
46 U.S.C. 8101(f)	Manning of Inspected Vessels	17,816
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG	17,816
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	2,355
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	2,355
46 U.S.C. 8103(f)	Citizenship Requirements	1,177
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	17,816
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	17,816
46 U.S.C. 8302(e)	Staff Department on Vessels	235
46 U.S.C. 8304(d)	Officer's Competency Certificates	235
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	17,816
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	17,816
46 U.S.C. 8503	Federal Pilots	56,467
46 U.S.C. 8701(d)	Merchant Mariners Documents	1,177
46 U.S.C. 8702(e)	Crew Requirements	17,816

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	2016 adjusted maximum penalty amount ($)
46 U.S.C. 8906	Small Vessel Manning	37,561
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	17,816
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	17,816
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	17,816
46 U.S.C. 10104(b)	Failure to Report Sexual Offense	9,468
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	1,177
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	1,177
46 U.S.C. 10315(c)	Allotment to Seamen	1,177
46 U.S.C. 10321	Seamen Protection; General	8,162
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	8,162
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	8,162
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	8,162
46 U.S.C. 10711	Effects of Deceased Seamen	471
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1,177
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	235
46 U.S.C. 10907(b)	Permission to Make Complaint	1,177
46 U.S.C. 11101(f)	Accommodations for Seamen	1,177
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1,177
46 U.S.C. 11104(b)	Destitute Seamen	235
46 U.S.C. 11105(c)	Wages on Discharge	1,177
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	471
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	471
46 U.S.C. 11303(c)	Log Books; Late Entry	353
46 U.S.C. 11506	Carrying of Sheath Knives	118
46 U.S.C. 12151(a)(1)	Vessel Documentation	15,423
46 U.S.C. 12151(a)(2)	Documentation of Vessels—Related to activities involving mobile offshore drilling units	25,705
46 U.S.C. 12151(c)	Vessel Documentation; Fishery Endorsement	117,858
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	11,774
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	2,355
46 U.S.C. 12507(b)	Vessel Identification System	19,787
46 U.S.C. 14701	Measurement of Vessels	43,126
46 U.S.C. 14702	Measurement; False Statements	43,126
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	19,787
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	19,787
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	49,467
46 U.S.C. 70119(a)	Port Security	32,796
46 U.S.C. 70119(b)	Port Security—Continuing Violations	58,929
46 U.S.C. 70506	Maritime Drug Law Enforcement; Penalties	5,437
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	77,114
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	179,933
49 U.S.C. 5123(a)(3)	Hazardous Materials: Related to Vessels—Training.	463

[1] Enacted under the Tariff Act of 1930, exempt from inflation adjustments.

Title 49—Transportation

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 12. The authority citation for part 1503 is revised to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 104–134, as amended by Pub. L. 114–74.

■ 13. Revise § 1503.401 to read as follows:

§ 1503.401 Maximum penalty amounts.

(a) *General.* TSA may assess civil penalties not exceeding the following amounts against a person for the violation of a TSA requirement.

(b) *In general.* Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C. chapter 701, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632). For violations that occurred after November 2, 2015, $11,002 per violation, up to a total of $55,010 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $11,002 per violation, up to a total of $440,080 per civil penalty action, in the case of any other person.

(c) Certain aviation related violations. In the case of a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632). For violations that occurred after November 2, 2015, $12,856 per violation, up to a total of 64,281 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $12,856 per violation, up to a total of $514,244 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $32,140 per violation, up to a total of $514,244 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of passengers or property for compensation.

Jeh Charles Johnson,
Secretary.

[FR Doc. 2016–15673 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–09–P; 9111–14–P; 9111–28–P; 9110–04–P; 9110–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1590

RIN 0551–AA87

Local and Regional Food Aid Procurement Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This document establishes rules to govern the award of funds by the Foreign Agricultural Service (FAS) to recipients under the USDA Local and Regional Food Aid Procurement Program (USDA LRP Program). Section 3206 of the Food, Conservation, and Energy Act of 2008, as amended by the Agricultural Act of 2014, provides that the Secretary of Agriculture will provide grants to, or enter into cooperative agreements with, eligible organizations to implement field-based projects that consist of local or regional procurements of eligible commodities in developing countries to provide development assistance and respond to food crises and disasters. The intended effects of the USDA LRP Program are to support development activities aimed at strengthening the trade capacity of food-insecure developing countries and to address the cause of chronic food insecurity. The regulation also addresses how emergency programming will be addressed.

DATES: Effective July 1, 2016.

Comment Dates: Written comments must be received by FAS or carry a postmark or equivalent no later than August 30, 2016.

ADDRESSES: Submit comments to:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave. SW., STOP 1034, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave. SW., STOP 1034, Washington, DC 20250. Telephone: (202) 720–4221; Fax: (202) 690–0251; Email: *FAD_Contact@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Overview

Section 3206 of the Food, Conservation, and Energy Act of 2008 (the "2008 Farm Bill"), as amended by the Agricultural Act of 2014 (the "2014 Farm Bill"), provides that the Secretary of Agriculture will establish a program to provide grants to, or enter into cooperative agreements with, eligible organizations to procure locally or regionally produced commodities to respond to food crises and disasters. International nongovernmental organizations (NGOs) and intergovernmental organizations, like the World Food Program (WFP), have successfully utilized local and regional procurement over the last decade. Local and regional procurement, which has increasingly become a key element in the multilateral food aid response, is used to purchase food in countries affected by disasters and food crises or in a different country within the same region.

Currently many bilateral food assistance donors have shifted from commodity-based in-kind food aid to a cash-based food assistance program. The World Food Program has cited that the use of cash-based programs enables NGOs and intergovernmental organizations to purchase food locally or regionally in order to deliver assistance to beneficiaries quickly and cost-effectively, while also providing development benefits to local communities by strengthening agricultural markets where the food is purchased.

Several academic and other studies have cited significant cost and time savings for certain commodities and in certain areas.[1] For example, GAO found that in Sub-Saharan Africa, local procurement cost about 34 percent less than similar in-kind U.S. food aid shipments. Some studies cited by the Government Accountability Office noted that large cash purchases in some developing countries could have detrimental effects on local market conditions if not carefully done. In cases where local purchases might substantially raise local market prices, in-kind donations of commodities may be more beneficial. Similarly, GAO and others have noted that in-kind donations can also have detrimental effects depending on local market conditions, depressing local farmers' prices if not carefully done. As the largest international food aid donor, contributing over half of all global food aid supplies to alleviate hunger and support development, the United States plays an important role in responding to food assistance needs and ensuring global food security. U.S. international food assistance programs must maintain flexibility and use the approach that best serves the in-country food security situation.

---

[1] See, for example, Erin C. Lentz, Simone Passarelli, Christopher B. Barrett, "The Timeliness and Cost-Effectiveness of the Local and Regional Procurement of Food Aid," World Development, Available online 1 March 2013, ISSN 0305–750X, 10.1016/j.worlddev.2013.01.017; Barrett, Christopher B., Samuel D. Bell, Teevrat Garg, Miguel I. Gomez, Aurélie P. Harou, Erin C. Lentz, Simone Passarelli, Joanna B. Upton and William J. Violette. "Final Report: A Multidimensional Analysis of Local and Regional Procurement of US Food Aid," January 2012. Cornell University; and General Accountability Office, *Local and Regional Procurement Can Enhance the Efficiency of U.S. Food Aid, but Challenges May Constrain Its Implementation,* GAO–09–570: Published: May 29, 2009. Publicly Released: Jun 4, 2009, *http://www.gao.gov/products/GAO-09-570.* Appendix VI of the GAO report includes a review of literature on local and regional procurement.

The USDA LRP Program adds another mechanism to deliver food assistance to the federal programs currently providing assistance, including Title II of the Food for Peace Act and International Disaster Assistance under the Foreign Assistance Act of 1961, both of which currently utilize local and regional procurement and are administered by the U.S. Agency for International Development, and USDA's Food for Progress Program and McGovern-Dole International Food for Education and Child Nutrition ("McGovern-Dole") Program. The USDA LRP Program aims to support development activities to strengthen the capacity of food-insecure developing countries and address the cause of chronic food insecurity. Other objectives of the USDA LRP Program are to support the consumption of locally produced food and strengthen local value chains and all associated procurement activities. The USDA LRP Program will focus primarily on development programs, although the rule also provides for the furnishing of food assistance through an emergency response. Given the role of the United States Agency for International Development (USAID) as the lead agency in the provision of U.S. emergency humanitarian assistance, any emergency response will be determined in consultation with the USAID Administrator, as provided for in section 3206(b)(2) of the 2008 Farm Bill, as amended, to ensure programs address the highest priority needs only and are not duplicative.

Lessons From Pilot Program

The 2008 Farm Bill, as enacted on June 18, 2008, authorized and funded a pilot program (the USDA LRP pilot program) to test different approaches and study practical lessons regarding the timeliness, cost effectiveness, impacts on market, and quality and other benefits of locally procured food assistance. Twenty-one local and regional procurement pilot projects were funded in nineteen countries. An independent evaluation that examined the activities of the final twenty projects in eighteen countries (due to the cancellation of one project) demonstrated that locally procured food assistance can provide food assistance at lower cost, with a shorter delivery time, and in some cases has other development benefits. The full evaluation can be viewed at *http://www.fas.usda.gov/newsroom/local-and-regional-food-aid-procurement-pilot-project-independent-evaluation-report*.

To address food safety and quality and market sensitivities, the USDA LRP Program will build capacity to meet quality standards and product specifications to ensure food safety and nutritional content within each project and with its beneficiaries. To address market sensitivities around local and regional purchases, the USDA LRP Program will work with its recipients to improve the reliability and utility of market intelligence in areas where the USDA LRP Program is implemented, seeking to ensure that the USDA LRP Program minimizes potential adverse impacts and maximizes potential benefits.

Program Essentials

The 2008 Farm Bill, as amended by the 2014 Farm Bill, authorizes the Secretary to provide grants to, or enter into cooperative agreements with, eligible organizations to implement international field-based projects that consist of local or regional procurements of eligible commodities to fill nutritional gaps for targeted populations and respond to food availability gaps generated by unexpected emergencies. The USDA LRP program will use the local or regional procurement of commodities for distribution in developing countries to complement existing food aid programs, giving preference to the McGovern-Dole Program. The Food and Agricultural Organization of the United Nations states that there is global consensus recognizing child nutrition as an essential element to improve not only the health and well-being of children around the world, but also the social and economic development of communities and countries. Under the USDA LRP Program, FAS will provide grants to, or enter into cooperative agreements with, private voluntary organizations, cooperatives, and the World Food Program to undertake activities such as strengthening value chains and other procurement activities.

The USDA LRP Program will be used for development projects, and focus on supplementing U.S. commodity purchases through the McGovern-Dole Program. The USDA LRP Program will focus on developing appropriate supply chains for the procurement of commodities from local producers. School meals using locally purchased foods will add locally known varieties to the meals, which may make them more appealing to the children and help increase nutrition. In cases where supply chains need to be strengthened in order to support a workable and reliable supply of food for the McGovern-Dole Program, the USDA LRP Program can work with producers, school authorities, and local municipalities in communities around schools to provide technical and management expertise to build reliable supply systems, as well as to procure commodities.

The USDA LRP Program will aim to strengthen rural farm communities economically and incentivize school attendance in order to improve education, while at the same time work with host country governments to build a type of safety net for those populations in great need. For example, this type of programing can address multiple issues in many developing countries, of which many have large, agricultural based economies with rural populations in need of education and market opportunities.

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act exempts rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" from the statutory requirement in 5 U.S.C. 553, which includes the requirement for prior notice and opportunity for comment (5 U.S.C. 553(a)(2)). However, members of the public may participate in this rulemaking by submitting written comments, data, or views. FAS will consider the comments received and may conduct additional rulemaking based on the comments. Written comments must be received by FAS or carry a postmark or equivalent no later than 60 days after publication of this rule in the **Federal Register**.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, noted above, one of the exceptions is that section 553 does not apply to rulemaking that involves a matter relating to benefits. Therefore, because this rule relates to benefits, this final rule is effective when published in the **Federal Register**. This will allow us to provide greater access to local and regional procured food aid as soon as possible during the 2016 school year.

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.612, USDA LRP Program.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports USDA's Local and Regional Food Aid Procurement Program was submitted to OMB for emergency approval. FAS is requesting comments from interested individuals and organizations on the information collection activities related to USDA's Local and Regional Food Aid Procurement application process and reporting requirements.

Title: USDA's Local and Regional Food Aid Procurement Program.

OMB Control Number: 0551–New.

Type of Request: New Collection.

Abstract: Under the USDA Local and Regional Food Aid Procurement Program, information will be gathered from applicants desiring to receive grants or enter into cooperative agreements under the USDA LRP Program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of grants or cooperative agreements under the USDA LRP Program must submit performance and financial reports until funds provided by FAS and commodities purchased with such funds are utilized. Documents are used to develop effective grant or cooperative agreements and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Local and Regional Food Aid Procurement Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for USDA Local and Regional Food Aid Procurement Program is 78 hours per response.

Type of Respondents: Private voluntary organizations, cooperatives, and intergovernmental organizations.

Estimated Number of Respondents: 22 per annum.

Estimated Number of Responses per Respondent: 17 per annum.

Estimated Total Annual Burden of Respondents: 29,172 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Ave. SW., STOP 1034, Washington, DC 20250.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

On February 16, 2016, FAS published in the **Federal Register** a notice entitled "Notice of Request for Approval of a New Information Collection" at 81 FR 7742. This notice included a 60 day comment period for interested individuals to provide comments on the information collection burden of the USDA LRP Program. As such, the notice duplicates the request for comments above pertaining to the information collection burden of the USDA LRP Program. Interested parties may provide comments on the information collection burden either by providing comments on this rule or on the **Federal Register** notice that was published on February 16, 2016. It is not necessary to provide comments on both documents.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the Internet and other information technologies to provide increased opportunities for citizens' access to Government information and services, and for other purposes.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has reviewed this rule. The costs and benefits of this final rule are summarized below. The full cost benefit analysis is available on *regulations.gov.*

Summary of Economic Impacts

The economic benefits of local and regional procurement have been identified in a number of studies[2] in addition to the USDA LRP pilot program during the period of 2009–2012, the results of which are documented in an independent evaluation report (*http://www.fas.usda.gov/newsroom/local-and-regional-food-aid-procurement-pilot-project-independent-evaluation-report*). For example, the results of the USDA LRP pilot program included: Cost savings in transport, shipping, and handling; better match between recipients' needs and program commodity availability; and time savings between the procurement and delivery of food, which is especially important in emergency situations. Since commodities purchased under the USDA LRP pilot program did not need to be shipped across oceans and were purchased nearer the final destination, the transport, shipping, and handling costs were on average lower than in-kind food assistance. In projects where recipients were children, improved commodity match resulted in more of the food provided being consumed, yielding nutritional gains. Delivery times for emergency food aid under the USDA LRP pilot program yielded faster delivery than in-kind food aid shipped from the United States. As a result of the USDA LRP pilot program, small-scale producers and suppliers began pooling resources to achieve economies of scale to increase their profitability. The USDA LRP Program is intended to maximize the impact of food assistance, consistent with the positive results achieved under the USDA LRP pilot program.

---

[2] See, for example, the references included in footnote 1.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local officials and, for this reason, it is excluded from the scope of Executive Order 12372.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule that is subject to notice and comment rulemaking under the Administrative Procedure Act (APA) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rule because FAS is not required by the APA or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule. FAS is unaware of any possible negative effects for U.S. small entities as a result of the USDA LRP Program.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." This rule will not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FAS does not expect this rule to have any effect on Indian tribes.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

List of Subjects in 7 CFR Part 1590

Food assistance programs, Grant programs—agriculture, Technical assistance, Local and regional procurement.

For the reasons stated in the preamble, the Foreign Agricultural Service amends 7 CFR chapter XV by adding part 1590 to read as follows:

PART 1590—UNITED STATES DEPARTMENT OF AGRICULTURE LOCAL AND REGIONAL FOOD AID PROCUREMENT PROGRAM

Sec.

1590.1 Purpose and applicability.
1590.2 Definitions.
1590.3 Eligibility and conflicts of interest.
1590.4 Application process.
1590.5 Agreements.
1590.6 Procurement of eligible commodities.
1590.7 Payments.
1590.8 Transportation of procured commodities.
1590.9 Entry, handling, and labeling of commodities and notification requirements.
1590.10 Damage to or loss of procured commodities.
1590.11 Claims for damage to or loss of procured commodities.
1590.12 Use of procured commodities, FAS-provided funds, and program income.
1590.13 Monitoring and evaluation requirements.
1590.14 Reporting and record keeping requirements.
1590.15 Subrecipients.
1590.16 Noncompliance with an agreement.
1590.17 Suspension and termination of agreements.
1590.18 Opportunities to object and appeals.
1590.19 Audit requirements.
1590.20 Paperwork Reduction Act.

Authority: 7 U.S.C. 1726c.

§ 1590.1 Purpose and applicability.

(a)(1) This part sets forth the general terms and conditions governing the award of funds by the Foreign Agricultural Service (FAS) to recipients under the U.S. Department of Agriculture (USDA) Local and Regional Food Aid Procurement Program (USDA LRP Program). Under the USDA LRP Program, recipients use FAS-provided funds to purchase eligible commodities in developing countries and pay for associated administrative and operational costs related to the implementation of field-based projects in a foreign country pursuant to an agreement with FAS.

(2) Funds provided by FAS under the USDA LRP Program may be used to provide food assistance in the form of development assistance, an emergency response, or both through a field-based project. Field-based projects intended to provide development assistance will be implemented for a period of not less than one year. Food assistance may be provided under the USDA LRP Program through local and regional procurement, food vouchers, and cash transfers.

(3) FAS will consult with the United States Agency for International Development in the development and implementation of field-based projects that will provide food assistance in the form of an emergency response.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In 2 CFR 400.1, USDA adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and by this part, applies to the USDA LRP Program, except as provided in paragraph (e) of this section.

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the USDA LRP Program.

(d) In accordance with 7 U.S.C. 1726c(a)(4), assistance under the USDA LRP Program may be provided to a private voluntary organization or a cooperative that is, to the extent practicable, registered with the Administrator of the U.S. Agency for International Development or to an intergovernmental organization, such as the World Food Program.

(e)(1) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all awards by FAS under the USDA LRP Program to all recipients that are private voluntary organizations or cooperatives, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47, and a cooperative that is a for-profit entity or a foreign organization. Subpart F of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and this part, apply only to awards by FAS to recipients that are private voluntary organizations or non-profit cooperatives but that are not foreign organizations. The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by FAS under the USDA LRP Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.46, and, therefore, they do not apply to an intergovernmental organization.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all subawards to all subrecipients under this part, except in cases:

(i) Where the subrecipient is a foreign public entity; or

(ii) Where FAS determines that the application of these provisions to a subaward to a subrecipient that is a foreign organization would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

§ 1590.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or part 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between FAS and a recipient to implement a field-based project under the USDA LRP Program.

Codex Alimentarius means the program of the United Nations Food and Agriculture Organization and the World Health Organization that was created to develop food standards, guidelines, and related texts, such as codes of practice to protect the health of consumers, ensure fair trade practices in the food trade, and promote the coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out the project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Country of origin means the country in which the procured commodities were produced.

Developing country means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

Development assistance means an activity or activities that will enhance the availability of, access to, or the utilization of adequate food to meet the caloric and nutritional needs of populations suffering from chronic food insecurity, or enhance the ability of such populations to build assets to protect against chronic food insecurity.

Disaster means an event or a series of events that creates a need for emergency food assistance by threatening or resulting in significantly decreased availability of, or access to, food or the erosion of the ability of populations to meet food needs. Disasters include, but are not limited to, natural events such as floods, earthquakes, and drought; crop failure; disease; civil strife and war; and economic turmoil. Disasters can be characterized as slow or rapid-onset. The situation caused by a disaster is a "food crisis."

Disburse means to make a payment to liquidate an obligation.

Eligible commodity means an agricultural commodity, or the product of an agricultural commodity, that is produced in and procured from a developing country, and that meets each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture, as well as any other criteria specified in section § 1590.6(b).

Emergency response means an activity that is designed to meet the urgent food and nutritional needs of those affected by acute or transitory food insecurity as a result of a disaster.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses for the purchase, ocean and overland transportation, and storage and handling of the procured commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and operational costs related to the implementation of the field-based project under the agreement.

Field-based project or project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement. It can either stand alone or be an add-on component to another program that provides other forms of assistance to the food insecure.

Food assistance means assistance that is provided to members of a targeted vulnerable group to meet their food needs.

Local procurement means the procurement of food by a recipient, directly or through a subrecipient, in the target country to assist beneficiaries within that same country. The use of food vouchers to obtain food under an agreement is a form of local procurement.

Overland transportation means any transportation other than ocean transportation. It includes internal transportation within the target country and regional transportation within the target region.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Procured commodities means the eligible commodities that are procured by a recipient, directly or through a subrecipient, under an agreement.

Program Income means funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include FAS-provided funds or interest earned on such funds; or funds provided for cost sharing or matching contributions, refunds or rebates, credits, discounts, or interest earned on any of them.

Purchase country means a developing country in which the procured commodities are purchased.

Recipient means an entity that enters into an agreement with FAS and receives FAS-provided funds to carry out activities under the agreement. The term recipient does not include a subrecipient.

Regional procurement means the procurement of food by a recipient, directly or through a subrecipient, in a developing country that is located on the same continent as the target country. Regional procurement does not include the purchase of food in the target country.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the developing country in which activities are implemented under an agreement.

Target region means the continent on which the target country is located or nearby.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant in its proposal, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

§ 1590.3 Eligibility and conflicts of interest.

(a)(1) A private voluntary organization or a cooperative is eligible to submit an application under this part to become a recipient under the USDA LRP Program if it is either registered with the Administrator of the U.S. Agency for International Development or FAS has determined that such registration is impracticable. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government Web site for grant opportunities.

(2) FAS may give preference for funding to eligible entities that have, or are working toward, projects under the McGovern-Dole International Food for Education and Child Nutrition Program established under section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(b) Applicants, recipients, and subrecipients must comply with policies established by FAS pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

§ 1590.4 Application process.

(a) An applicant seeking to enter into an agreement with FAS must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the USDA LRP Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section and any other items required by the notice of funding opportunity and must be submitted electronically to FAS at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction and impact analysis, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a budget narrative that indicate:

(i) The amount(s) of any FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Commodity procurement costs, including costs for locally and regionally procured commodities, and food vouchers;

(C) Transportation, storage, and handling costs; and

(D) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the USDA LRP Program-level results framework;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, interim evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Each applicant (unless the applicant has an exception approved by FAS under 2 CFR 25.110(d)) is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

§ 1590.5 Agreements.

(a) After FAS approves a proposal by an applicant, FAS will negotiate an agreement with the applicant. The agreement will set forth the obligations of FAS and the recipient.

(b) The agreement will specify the general information required in 2 CFR 200.210(a), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.210(b), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b) and (c) of this section, the agreement will also include the following:

(1) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The method(s) and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-FAS sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting a subrecipient that has not yet been identified;

(vii) Any other governmental or nongovernmental entities that will be involved in the implementation of the activities; and

(viii) Any additional items specified by FAS during the negotiation of the agreement;

(2) Requirements relating to the procurement of the eligible commodities, as set forth in § 1590.6;

(3) A budget, which will set forth the maximum amounts of FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item; and

(4) Performance goals for the agreement, including a list of results to be achieved by the activities and corresponding indicators, targets, and time frames.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following:

(1) The agreement will prohibit the use of the procured commodities, food vouchers, or cash transfers for any purpose other than food assistance;

(2) The agreement will prohibit the resale or transshipment of the procured commodities by the recipient to a country other than the target country specified in the agreement for so long as the recipient has title to such commodities;

(3) The recipient will assert that it has taken action to ensure that any eligible commodities that will be procured regionally will be imported free from all customs, duties, tolls, and taxes. The recipient must submit information to FAS to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, the eligible commodities can be procured locally or regionally without a disruptive impact on farmers located in, or the economy of, the target country or any country in the target region. The recipient will also assert that, to the best of its knowledge, the eligible commodities can be procured without unduly disrupting world prices for agricultural commodities or normal patterns of commercial trade with foreign countries. The recipient must submit information to FAS to support these assertions; and

(5) The recipient will assert that adequate transportation and storage facilities are available in the target country to prevent spoilage or waste of the eligible commodities. The recipient must submit information to FAS to support these assertions.

(f) FAS may enter into a multicountry agreement.

(g) FAS may provide funds under a multiyear agreement contingent upon the availability of funds.

§ 1590.6 Procurement of eligible commodities.

(a)(1) When using funds provided by FAS under the USDA LRP Program to make a local or regional procurement of food, including through the use of food vouchers, the recipient, or a subrecipient, must procure eligible commodities.

(2) The agreement will specify the types of eligible commodities approved for procurement; the approved purchase country(ies); and the approved method(s) of procurement (local procurement, regional procurement, food vouchers, or a combination of these methods). The agreement will prohibit the recipient from procuring eligible commodities from any country not specified in the agreement or utilizing methods of procurement that differ from those approved in the agreement.

(b) In carrying out an agreement, the recipient must comply with the following requirements, as applicable, relating to the procurement of eligible commodities under the agreement:

(1) The recipient must procure eligible commodities at a reasonable market price with respect to the economy of the purchase country, as determined by FAS.

(2) If the recipient procures eligible commodities that are grains, legumes, and pulses, the commodities must meet the food safety standards of the target country; provided, however, that if the target country does not have food safety standards for grains, legumes, and pulses, then the recipient must ensure that such commodities meet the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1–1969 Rev 4–2003, including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines.*

(3) If the recipient procures eligible commodities that are food products other than grains, legumes or pulses, such as processed foods, fortified blended foods, and enriched foods, the commodities must comply, in terms of raw materials, composition, or manufacture, unless otherwise specified in the agreement, with the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1–1969 Rev 4–2003 including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines.*

(4) If the recipient procures eligible commodities that are cereals, groundnuts, or tree nuts, or food products derived from or containing cereals, groundnuts, or tree nuts, the commodities must be tested for aflatoxin and have their moisture content certified. The maximum acceptable total aflatoxin level is 20 parts per billion, the U.S. Food and Drug Administration action level for aflatoxin in human foods.

(5) If the recipient procures an unprocessed commodity, it must ensure that the commodity has been produced either in the target country or in another developing country within the target region.

(6) If the recipient purchases a processed commodity, it must ensure that the processing took place, and the primary ingredient has been produced, either in the target country or in another developing country within the target region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquids.

(7) If the recipient purchases eligible commodities through a competitive tender, the recipient must specify the minimally acceptable commodity specifications and food safety and quality assurance standards in the tender. Purchases that are made from commercial wholesalers in a local or regional market must meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(8) The recipient must enter into a contract that complies with this paragraph for every local or regional procurement of eligible commodities, other than through food vouchers, from a commodity vendor. The recipient must ensure that the contract between the recipient and the commodity vendor clearly specifies the country of origin and specific market(s) in which the procurement will take place, commodity

safety and quality assurance standards, product specifications, price per metric ton, and delivery terms. Recipients will be required to make such contracts available to FAS upon request.

(9) The recipient must enter into a contract with an established inspection service to survey and report on the safety, quality, and condition of all procured commodities, other than those procured through food vouchers, prior to their shipment and distribution. The recipient will be required to submit any survey reports or certificates issued by such inspection service to FAS upon request.

(10) The recipient must enter into a contract with each vendor expected to redeem food vouchers distributed under an agreement that specifies the conditions under which the vouchers will be redeemed for food. The recipient must ensure that beneficiaries use food vouchers to purchase eligible commodities that meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(c) The agreement will require the recipient to submit a procurement plan for FAS's approval within the time period specified in the agreement. The procurement plan will include time periods, broken down by month, for commodity procurement, delivery, and distribution and, where applicable, the distribution of food vouchers. The agreement will require the recipient to comply with the procurement plan, as approved by FAS, and will prohibit the recipient from making any changes to the procurement plan without obtaining the prior written approval of FAS.

§ 1590.7 Payments.

(a) If the agreement authorizes the payment of FAS-provided funds, FAS will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of FAS-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, the recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by FAS to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by FAS and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain the balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) FAS will review all requests to roll over unexpended funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. FAS will consider factors such as the amount of funding that the recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) FAS will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and FAS or the Commodity Credit Corporation (CCC), is more than three months in arrears.

(6)(i) A recipient must return to FAS any funds advanced by FAS that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (a)(6)(ii) and (iii) of this section will apply if the recipient submits a request to FAS before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and FAS approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from FAS, for the purposes of complying with the requirement in paragraph (a)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and FAS does not approve the rollover of some or all of the funds, such funds must be returned to FAS.

(iv) If the recipient must return funds to FAS in accordance with paragraph (a)(6) of this section, the recipient must return the funds on the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from FAS that it has denied the recipient's request to roll over the funds; provided, however, that FAS may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, the recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by FAS. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies, or FAS determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of FAS-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative purposes, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(b) If a recipient is required to pay funds to FAS in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

§ 1590.8 Transportation of procured commodities.

(a) The recipient must acquire all transportation of procured commodities under the USDA LRP Program. FAS will pay for the transportation, as provided for in the agreement, through an advance payment or reimbursement to the recipient.

(b) A recipient that acquires ocean transportation in accordance with paragraph (a) of this section must comply with the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(c) The recipient may only use the services of a transportation company that is legally operating in the target country or another country within the target region, and that would not have a conflict of interest in transporting the commodities.

(d) The recipient must declare in the transportation contract the point at which the ocean carrier or overland transportation company will take custody of the eligible commodities to be transported.

§ 1590.9 Entry, handling, and labeling of procured commodities and notification requirements.

(a) The recipient must make all necessary arrangements for receiving regionally procured commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all regionally procured commodities to be imported and distributed free from all customs duties, tolls, and taxes, unless otherwise specified in the agreement.

(b) The recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the procured commodities from the designated point and time where title to the commodities passes to the recipient.

(c) The recipient must store and maintain all of the procured commodities in good condition from the time of delivery at the port of entry or the point of receipt from the commodity vendor(s) until their distribution.

(d)(1) If a recipient arranges for the packaging or repackaging of the procured commodities, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the procured commodities;

(iii) Contains the name of the country of origin;

(iv) Includes a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture; and

(v) Includes a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(2) If a recipient distributes procured commodities that are prepackaged or not packaged, the recipient must display a sign at the distribution site that includes the name of the procured commodities, the country of origin, a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture, and a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(3) If a recipient distributes food vouchers or cash transfers, the recipient must display a sign at the distribution site that includes a statement indicating that the food vouchers or cash transfers are being furnished through a project funded by the United States Department of Agriculture. The recipient must ensure that all paper vouchers or receipts for electronic vouchers are printed with a statement indicating that the vouchers are being furnished through a project funded by the United States Department of Agriculture. The vouchers must also include a statement indicating that they must not be sold, bartered, or exchanged.

(e) The recipient must ensure that signs are displayed at all activity implementation and commodity, food voucher, or cash transfer distribution sites to inform beneficiaries that funding for the project was provided by the United States Department of Agriculture.

(f) The recipient must also ensure that all public communications in relation to the project, the activities, or the procured commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the United States Department of Agriculture.

(g) FAS may waive compliance with one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section if a recipient demonstrates to FAS that the requirement presents a safety or security risk in the target country. If a recipient determines that compliance with a labeling or notification requirement poses an imminent threat of destruction of property, injury, or loss of life, the recipient must submit a waiver request to FAS as soon as possible. The recipient will not have to comply with such requirement during the period prior to the issuance of a waiver determination by FAS. A recipient may submit a written request for a waiver at any time after the agreement has been signed.

(h) In exceptional circumstances, FAS may, on its own initiative, waive one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section for programmatic reasons.

§ 1590.10 Damage to or loss of procured commodities.

(a) The recipient will be responsible for the procured commodities following the transfer of title to the procured commodities from the commodity vendor(s) to the recipient. FAS may require the recipient to purchase transportation insurance against commodity loss or damage.

(b) A recipient must inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the procured commodities that occurs following the transfer of title to the procured commodities to the recipient. The recipient must take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the procured commodities that occurs after title has been transferred to the recipient.

(c) The recipient will be responsible for arranging for an independent cargo surveyor to inspect any procured commodities transported by ocean upon discharge from the vessel and to prepare a survey or outturn report. The report must show the quantity and condition of the procured commodities discharged from the vessel and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the vessel, unless FAS determines that failure to do so was justified under the circumstances. For procured commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(d) When procured commodities are transported overland, the recipient will ensure that overland transportation contracts include a requirement that a loading and offloading report be prepared and provided to the recipient. The report must show the quantity and condition of the procured commodities loaded on the overland conveyance, as well as the time and place that the loading and offloading occurred. The recipient must obtain a copy of the report from the overland transportation company within 45 days after the completion of the commodity delivery. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(e) If procured commodities are damaged or lost during the time that they are in the care of an ocean carrier or overland transportation company:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to FAS;

(2) The recipient must provide to FAS the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost procured commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations, and any other factors that may affect the accuracy of scale weights, and, if scales are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(e) If the recipient has title to the procured commodities, and procured commodities valued in excess of $5,000 are damaged at any time prior to their distribution under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged procured commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities. The recipient must inform FAS of the results of the inspection and indicate whether the damaged procured commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(f)(1) If the recipient has title to the procured commodities, the recipient must arrange for the recovery of that portion of the procured commodities designated as suitable for the use authorized in the agreement. The recipient must dispose of procured commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.*, animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the procured commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The recipient must arrange for all U.S. Government markings to be obliterated or removed before the procured commodities are transferred by sale or donation under paragraph (f)(1) of this section.

(g) A recipient may retain any proceeds generated by the disposal of the procured commodities in accordance with paragraph (f)(1) of this section and must use the retained proceeds for expenses related to the disposal of the procured commodities and for activities specified in the agreement.

(h) The recipient must notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (f) of this section, including the quantities, values, and dispositions of procured commodities determined to be unfit.

§ 1590.11 Claims for damage to or loss of procured commodities.

(a) The recipient will be responsible for claims arising out of damage to or loss of a quantity of the procured commodities after the transfer of title to the procured commodities from the commodity vendor(s) to the recipient.

(b) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be in excess of $20,000, the recipient must:

(1) Notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost procured commodities, and the value of the damage or loss;

(2) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(3) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(4) Provide to FAS copies of all documentation relating to the claim.

(c) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be $20,000 or less, the recipient must notify FAS in accordance with the agreement and provide detailed information about the damage or loss in the next report required to be filed under § 1590.14(e).

(d)(1) The value of a claim for lost procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities.

(2) The value of a claim for damaged procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1590.10(f)(1).

(e) If FAS determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, FAS may require the recipient to assign its rights to pursue the claim to FAS. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of a claim will be considered by FAS during the review of proposals for subsequent food assistance awards.

(f)(1) The recipient may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended as provided for in the agreement or for other purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the procured commodities or a portion thereof, FAS will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

§ 1590.12 Use of procured commodities, FAS-provided funds, and program income.

(a) A recipient must use the procured commodities, FAS-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use procured commodities, FAS-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of FAS.

(c) A recipient must not permit the distribution, handling, or allocation of procured commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of procured commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(e) A recipient must not use FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(f) A recipient may sell the procured commodities only if the recipient is disposing of damaged procured commodities as specified in § 1590.10.

(g) A recipient must deposit and maintain all FAS-provided funds and program income in a bank account until they are used for a purpose authorized under the agreement or the FAS-provided funds are returned to FAS in accordance with § 1590.7(a)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that this requirement would constitute an undue burden. The recipient must comply with the requirements in § 1590.7(a)(7) with regard to the deposit of advance payments by FAS.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed ten percent of the Grand Total Costs, excluding any voluntary committed cost sharing or matching contributions, in the agreement budget. Adjustments beyond these limits require the prior approval of FAS.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.75, to other categories of expense without the prior approval of FAS.

(i) A recipient may use FAS-provided funds or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, the recipient must not use FAS-provided funds or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use FAS-provided funds or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of procured commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the procured commodities are stored in it. If the use of FAS-provided funds or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the FAS-provided funds or program income for this purpose until it receives written approval from FAS.

(j) The recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, the recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) As provided for in the agreement, the recipient must enter into a written contract with each provider of goods, services, or construction work that is valued in excess of the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient. The recipient must submit a copy of the signed contracts to FAS upon request.

§ 1590.13 Monitoring and evaluation requirements.

(a) The recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) The recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) The recipient must inform FAS, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from FAS to resolve the situation.

(d) The recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to FAS as part of its application, pursuant to § 1590.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3) Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness

analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, the recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition.

(2) The recipient must provide a written certification to FAS that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) FAS will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) The recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain separate budgets for monitoring and evaluation, and separate budget line items for dedicated recipient monitoring and evaluation staff and independent third-party evaluation contracts.

(2) Personnel at the recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) FAS may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection with any evaluation conducted or commissioned by FAS. Such evaluations may be conducted by FAS internally or by an FAS-hired external evaluation contractor.

§ 1590.14 Reporting and recordkeeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.327 through 200.329.

(b) The recipient must submit financial reports to FAS in accordance with the schedule provided in the agreement. Such reports must provide an accurate accounting of FAS-provided funds, interest earned, program income, and voluntary committed cost sharing or matching contributions.

(c)(1) The recipient must submit performance reports to FAS, in the manner specified in the agreement. These reports must include the information required in 2 CFR 200.328(b)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report.

(2) The recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the recipient's performance data to determine whether it is accurate and reliable. A recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(d) Baseline, interim, and final evaluation reports are required for all agreements for development assistance projects, unless otherwise specified in the agreement. A rapid needs assessment and a final evaluation report are required for all agreements for emergency response projects, unless otherwise specified in the agreement. An interim evaluation report is not required for emergency response projects, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline provided in the FAS-approved evaluation plan. Evaluation reports submitted to FAS will be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must submit reports to FAS, using a form as prescribed by FAS, covering the receipt, handling, and disposition of the procured commodities and, if applicable, food vouchers and cash transfers. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the procured commodities and, if applicable, food vouchers and cash transfers have been distributed and such disposition has been reported to FAS.

(f) If requested by FAS, the recipient must provide to FAS additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.333 through 200.337. The date of submission of the final expenditure report, as referenced in 2 CFR 200.333, will be the final date of submission of the reports required by paragraph (e) of this section, as prescribed by FAS. The recipient must retain copies of and make available to FAS all sales receipts, contracts, or other documents related to the procurement of eligible commodities, as well as records of dispatch received from ocean carriers or overland transportation companies.

§ 1590.15 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive procured commodities, FAS-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.331. The recipient must provide a copy of each subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any procured commodities, FAS-provided funds, or program income to the subrecipient.

(b) The recipient must include the following requirements in the subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to subrecipients because they directly concern the implementation of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient is prohibited from using FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any procured commodities, FAS-provided funds, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) In accordance with § 1590.19 and 2 CFR 200.501(h), a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) The recipient must monitor the actions of a subrecipient as necessary to ensure that procured commodities, FAS-provided funds, and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1590.16 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and FAS determines that the noncompliance cannot be remedied by imposing additional conditions, FAS may take one or more of the actions set forth in 2 CFR 200.338, including initiating a claim as a remedy. FAS may also initiate a claim against a recipient if the procured commodities are damaged or lost, or the FAS-provided funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

§ 1590.17 Suspension and termination of agreements.

(a) An agreement or subagreement may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the procured commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the target country.

(b) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed procured commodities and must dispose of such commodities only as agreed to by FAS; and

(2) Must comply with the closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1590.18 Opportunities to object and appeals.

(a) FAS will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by FAS pursuant to § 1590.16. FAS will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. In the absence of such other requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the FAS official specified in the agreement within 30 days after the date that FAS notified the recipient that FAS was taking the action being challenged. This official will endeavor to notify the recipient of his or her determination within 60 days after the date that FAS received the recipient's written objection.

(c) The recipient may appeal the determination of the official to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination by the FAS official. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that FAS received the appeal. The determination of the Administrator will be the final determination of FAS. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

§ 1590.19 Audit requirements.

(a) Subpart F, Audit requirements, of 2 CFR part 200 applies to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020–000–00–265–4) of the agreement or subagreement, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under only one FAS program; or

(ii) A financial related audit of all Federal awards from FAS, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under multiple FAS programs; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is exempt from requirements for a non-Federal audit for that year, except as provided in paragraph (d) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or the U.S. Government Accountability Office may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

Dated: June 24, 2016.

Suzanne Palmieri,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2016–15537 Filed 6–30–16; 8:45 am]

BILLING CODE 3410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC–2016–0057]

RIN 3150–AJ72

Adjustment of Civil Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act). The NRC is amending its regulations to adjust the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA from $140,000 to $280,469 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from $7,000 to $10,781 for each false claim or statement.

DATES: This interim final rule is effective on August 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0057 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0057. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Eric Michel, Office of the General Counsel, telephone: 301–287–3704, email: *Eric.Michel2@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion
III. Procedural Background
IV. Section-by-Section Analysis
V. Regulatory Flexibility Certification
VI. Regulatory Analysis
VII. Backfitting and Issue Finality
VIII. Plain Writing
IX. National Environmental Policy Act
X. Paperwork Reduction Act
XI. Congressional Review Act

I. Background

Congress passed the FCPIAA in 1990 to allow for regular adjustment for inflation of CMPs, maintain the deterrent effect of civil monetary penalties and promote compliance with the law, and improve the collection of CMPs by the Federal government (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note). As amended by the Debt Collection Improvement Act of 1996, the FCPIAA required that the head of each agency review, and if necessary adjust by regulation, the CMPs assessed under statutes enforced by that agency at least once every 4 years, in accordance with a statutory formula linked to the percentage change in the Consumer Price Index (CPI) (Pub. L. 104–134, 110 Stat. 1321–373). The NRC has amended the CMP amounts under statutes it enforces (the AEA and Program Fraud Civil Remedies Act) four times, most recently in 2008 (September 23, 2008; 73 FR 54671). An adjustment was not performed in 2012 because the FCPIAA required agencies to round their CMP amounts to the nearest multiple of $1,000 or $10,000, depending on the size of the CMP amount, and the 2012 adjustments based on the statutory formula were small enough that no adjustment resulted.

On November 2, 2015, the FCPIAA was amended by the 2015 Improvements Act (Sec. 701, Pub. L. 114–74, 129 Stat. 599). The 2015 Improvements Act requires that the head of each agency through an interim final rulemaking make an initial "catch-up" adjustment of the CMPs assessed under statutes enforced by that agency by July 1, 2016, to be effective no later than August 1, 2016. This initial catch-up adjustment is to be calculated according to the percentage change between the CPI for the month of October 2015 and the CPI for the month of October of the calendar year when the CMP amount was last established by some means other than a FCPIAA adjustment. The increase for the initial catch up adjustment may not exceed 150 percent of the CMP amount as of the date of the enactment of the 2015 Improvements Act. Following the initial catch-up adjustment, agencies must continue to adjust their CMPs by January 15 of each year. This calculation is based on the percentage change between the CPI for the preceding month of October and the CPI for the month of October in the preceding year. All increases under the 2015 Improvements Act are to be rounded to the nearest multiple of one dollar.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to $100,000 per day, per violation (42 U.S.C. 2282). Congress established the $100,000 amount in 1980 (Pub. L. 96–295, 94 Stat. 787). As discussed in Section I, "Background," of this document, the NRC has adjusted this amount (currently set at $140,000) on four occasions since 1980, each time pursuant to the FCPIAA. For purposes of calculating the initial catch-up adjustment under the 2015 Improvements Act, the relevant baseline year for AEA CMPs is 1980 (the last time the CMP was established by some means other than a FCPIAA adjustment). Using the formula in the 2015 Improvements Act, the $100,000 amount established in 1980 will increase by 280.469 percent, resulting in a new CMP figure of $280,469.[1] The 2015 Improvements Act caps the increase in penalty levels for the initial catch-up adjustment at no more than 150 percent of the CMP level in effect as of November 2, 2015, which means the amount of increase for AEA CMPs cannot exceed $210,000 (150 percent of the current $140,000 amount). A new CMP amount of $280,469 is an increase of $140,469, which is within the limit imposed by the 2015 Improvements Act. Therefore, the NRC is amending § 2.205 of title 10 of the *Code of Federal Regulations* (10 CFR) to reflect a new maximum CMP under the AEA in the amount of $280,469 per day, per violation.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at $5,000 per claim (Pub. L. 99–509, 100 Stat. 1938; 31 U.S.C. 3802). The NRC has adjusted this amount (currently set at $7,000) multiple times pursuant to the FCPIAA since 1986. Using 1986 as the baseline year, the $5,000 amount will increase by 215.628 percent, resulting in a new CMP amount of $10,781. This is a $3,781 increase from the current $7,000 CMP amount, which is less than the statutory cap of a $10,500 increase (150 percent of $7,000). Therefore, the NRC is amending 10 CFR 13.3 to reflect a new maximum CMP amount of $10,781 per claim.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this interim final rule (August 1, 2016), regardless of whether the associated violation occurred before or after this date (Pub. L. 114–74, 129 Stat. 600; 28 U.S.C. 2461 note). Conforming changes to the NRC Enforcement Policy (ADAMS Accession No. ML15029A148) will be published in a forthcoming **Federal Register** notice before the effective date of this interim final rule (August 1, 2016).

III. Procedural Background

This interim final rule has been issued without prior public notice or opportunity for public comments. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, the NRC finds, for good cause, that solicitation of public comment on this interim final rule is unnecessary. Through the FCPIAA and 2015 Improvements Act, Congress has provided a non-discretionary statutory formula by which the NRC must adjust its CMPs for inflation. Requesting public comment on these CMP adjustments, which are required by statute, would not result in a different amount.

IV. Section-by-Section Analysis

Paragraph (j) in § 2.205 is revised by replacing "$140,000" with "$280,469".

Paragraphs (a)(1)(iv) and (b)(1)(ii) in § 13.3 are revised by replacing "$7,000" with "$10,781".

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Regulatory Analysis

This interim final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (28 U.S.C. 2461 note). Congress passed this legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Therefore, these are the anticipated impacts of this rulemaking. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (10 CFR 2.205), or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13).

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this rulemaking. This interim final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this interim final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This interim final rule does not modify any licensee system, structures, components, designs, approvals, or procedures required for the design, construction, or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

IX. National Environmental Policy Act

The NRC has determined that this interim final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this interim final rule.

X. Paperwork Reduction Statement

This interim final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This interim final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

---

[1] This figure is confirmed by guidance from the Office of Management and Budget (OMB) concerning implementation of the 2015 Improvements Act. *See* OMB M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016), available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

■ 2. Amend § 2.205 by revising paragraph (j) to read as follows:

§ 2.205 Civil penalties.

* * * * *

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed $280,469 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purposes of computing the applicable civil penalty.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 3. The authority citation for part 13 is revised to read as follows:

Authority: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note.

Section 13.3 also issued under 28 U.S.C. 2461 note.

Section 13.13 also issued under 31 U.S.C. 3730.

■ 4. Amend § 13.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 13.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,781 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,781 for each such statement.

* * * * *

Dated in Rockville, Maryland, this 20 day of June, 2016.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2016–15399 Filed 6–30–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

[Docket ID OCC–2016–0008]

RIN 1557–AE04

Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to publish the maximum amount, adjusted for inflation, of each civil money penalty within its jurisdiction to administer. These actions are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective on August 1, 2016. Comments must be submitted by August 30, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title "Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0008" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2016–0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0008" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, or Alexander Abramovich, Attorney, Enforcement and Compliance Division, (202) 649–6200, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),[1] which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act).[2] The Inflation Adjustment Act required the OCC and other Federal agencies with civil money penalty (CMP) authority to publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer.[3] Key features of the Inflation Adjustment Act included requiring such agencies to make inflation adjustments at least once every four years following any initial adjustment, capping the initial inflation adjustment increase at 10 percent, and imposing rounding rules that limited increases based on the amount of the penalty.

The purpose of the 2015 Act is to: (i) Establish a mechanism to regularly adjust CMPs for inflation; (ii) maintain the deterrent effect of CMPs and promote compliance with the law; and (iii) improve the collection of CMPs by the Federal government.[4] Key provisions of the 2015 Act include simplifying the process for calculating the inflation increase, eliminating the complex rounding rules, and requiring Federal agencies to adjust penalties on an annual basis.

The 2015 Act requires agencies to increase the level of each maximum CMP, or the range of minimum and maximum CMPs, with an initial "catch-up" adjustment through an interim final rule published in the **Federal Register** no later than July 1, 2016, with an effective date no later than August 1, 2016.[5] Under the 2015 Act, agencies must calculate initial catch-up adjustments based on the percentage increase in the October 2015 Consumer Price Index for all Urban Consumers (CPI–U)[6] from the October CPI–U of the year the CMP was established or last adjusted by law. However, for the catch-up adjustment, the amount of the initial increase may not exceed 150 percent of the CMP in effect on the date the 2015 Act was enacted (*i.e.,* November 2, 2015).

The 2015 Act requires agencies to publish subsequent annual adjustments in the **Federal Register** no later than January 15 of each year, beginning on January 15, 2017. The 2015 Act also requires agencies to calculate subsequent annual inflation adjustments based on the percentage increase in the CPI–U for the month of October preceding the date of the adjustment from the prior year's October CPI–U and to round all adjustments to the nearest dollar.

The 2015 Act also requires OMB to issue guidance to Federal agencies on implementing the required inflation adjustments. The OMB guidance (OMB Guidance), issued February 24, 2016, provides the multiplier (*i.e.,* the inflation adjustment factor agencies must use to adjust their penalties), step-by-step instructions on how to calculate the catch-up adjustments, and other relevant information.[7]

The OCC last evaluated and adjusted the maximum amount of CMPs applicable to national banks and Federal savings associations in 2012. An interim final rule was published in the **Federal Register** on November 6, 2012,[8] and became effective on December 6, 2012. The OCC published a technical amendment to this rule in the **Federal Register** on December 28, 2012,[9] that became effective on December 28, 2012.

II. Description of the Interim Final Rule

A. Initial Inflation Adjustment

This interim final rule adjusts for inflation the maximum assessment for each CMP that the OCC has jurisdiction to impose in accordance with the 2015 Act and the OMB Guidance. The OCC is incorporating these adjustments into the charts that are set forth at 12 CFR 19.240(a) with respect to national banks (national bank chart) and 12 CFR 109.103(c) with respect to Federal savings associations (Federal savings association chart). Each chart identifies the statutes that authorize the OCC to assess CMPs, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision. The OCC calculated the amounts in the charts in accordance with the OMB Guidance, as follows.

---

[1] Public Law 114–74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, *codified at* 28 U.S.C. 2461 note.

[2] *See* Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, *codified at* 28 U.S.C. 2461 note.

[3] The 2015 Act defines a "civil monetary penalty" to mean "any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts." 28 U.S.C. 2461 note, section 3(2). Thus, a penalty based on another measure, such as a percentage of total assets, need not be adjusted.

[4] *See* 28 U.S.C. 2461 note, section 2(b).

[5] The 2015 Act, however, provides a mechanism for an agency, with the concurrence of the Office of Management and Budget (OMB), to reduce a catch-up adjustment if the agency demonstrates the required increase of the penalty or penalty range would have a negative economic impact or that social costs would outweigh the benefits.

[6] This index is published by the Department of Labor.

[7] Office of Management and Budget Memorandum, M–16–06 (February 24, 2016), *available at: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[8] 77 FR 66529.

[9] 77 FR 76354.

In order to calculate the catch-up adjustment, the OMB Guidance instructs agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (*i.e.*, as originally enacted by Congress), or last adjusted (*i.e.*, by Congress in statute, or by the agency through regulation), whichever is later, other than pursuant to the Inflation Adjustment Act. Thus, this step of the calculation excludes prior inflation adjustments under the Inflation Adjustment Act.[10]

The OMB Guidance then directs agencies to modify that penalty level or range based on the CPI–U for the month of October 2015, not seasonally adjusted. OMB calculated the multiplier that agencies must apply in order to adjust the penalty level or range of penalty levels, based on the year the penalty was established or last adjusted by statute or regulation, and provided these multipliers for the years 1914 through 2015.[11] Agencies must apply the multiplier and round all penalty levels to the nearest dollar. However, because the 2015 Act caps the amount of the initial catch-up adjustment at 150 percent, the OMB Guidance states that each adjusted penalty cannot exceed 250 percent of the penalty level in effect on November 2, 2015.[12] The 2015 Act states that agencies are required to apply the new penalty levels to CMPs that are assessed after the effective date of the rule. The OMB Guidance clarifies that inflation adjustments calculated and assessed pursuant to the 2015 Act adjust penalties prospectively and do not retrospectively change penalties previously assessed or enforced that the agency is actively collecting or has collected.[13]

The worksheets below show how the OCC calculated the new penalty levels for national banks and Federal savings associations. Only two penalties, those provided in 12 U.S.C. 1832(c) and 1884, were capped at 250 percent of the amount of the penalty on November 2, 2015.

The OCC did not exercise the discretion it is provided under the 2015 Act to seek a reduced catch-up adjustment determination from OMB. Such a request would have required the OCC to demonstrate that the penalty would have a negative economic impact, or that the social costs of the adjustment would outweigh the benefits.[14] As the penalties reflected in the national bank chart and Federal savings association chart are, for the most part, maximum penalties, the OCC may impose lesser penalties, if warranted. Accordingly, the OCC concluded that a reduced catch-up adjustment determination was not necessary.

B. Penalties Added to the National Bank Chart and Federal Savings Association Chart

This interim final rule adjusts the following additional penalties that are being incorporated into the national bank chart and Federal savings association chart. First, both charts include a new CMP, provided in 15 U.S.C. 1639e(k), created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[15] The new CMP makes it unlawful for a creditor who extends credit, or provides any services for a consumer credit transaction secured by the consumer's principal dwelling, to engage in any act or practice that violates the regulation implementing the appraisal independence requirements in section 1472 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act, the maximum daily penalty for the first violation is $10,000 and the maximum daily penalty for subsequent violations is $20,000. The adjusted maximum daily penalties will be $10,875 and $21,749, respectively.

The OCC also is adjusting the penalty provided in 12 U.S.C. 481, an existing CMP that previously was not included in the chart. Twelve U.S.C. 481 authorizes the OCC to assess on a national bank a maximum daily penalty of no more than $5,000 if any affiliate of a national bank refuses to permit an examiner to make an examination of such affiliate or refuses to provide any information required in the course of such an examination. The adjusted maximum daily penalty will be $9,468.

In addition, the OCC is adjusting the penalties provided in 12 U.S.C. 1832(c), 12 U.S.C. 1972(2)(F), and 15 U.S.C. 78u–2(b), three CMPs that are in the national bank chart, but were not previously included in the chart applicable to Federal savings associations. Twelve U.S.C. 1832(c) makes it unlawful for a depository institution to violate the restrictions on withdrawals by negotiable or transferable instruments for transfers to third parties. The penalty when first established was $1,000 per violation. The adjusted penalty will be $2,750 per violation. Twelve U.S.C 1972(2)(F) makes it unlawful for a savings association to violate anti-tying restrictions regarding correspondent accounts, unsafe or unsound practices, or breach of fiduciary duty. When first established, the maximum daily penalty was: $5,000 for a tier 1 violation; $25,000 for a tier 2 violation; $1,000,000 for a tier 3 violation by a person other than a bank; and the lesser of $1,000,000 or 1 percent of total assets for a tier 3 violation by a bank. The adjusted maximum daily penalties will be: $9,468 for a tier 1 violation; $47,340 for a tier 2 violation; $1,893,610 for a tier 3 violation by a person other than a bank; and the lesser of $1,893,610 or 1 percent of total assets for a tier 3 violation by a bank. Fifteen U.S.C. 78u–2(b) provides penalties for violations of various provisions of the Securities Act,[16] the Securities Exchange Act,[17] the Investment Company Act,[18] and the Investment Advisers Act,[19] as applicable. When first established, the maximum penalty per violation was: $5,000 for a tier 1 violation by a natural person; $50,000 for a tier 1 violation by any other person; $50,000 for a tier 2 violation by a natural person; $250,000 for a tier 2 violation by any other person; $100,000 for a tier 3 violation by a natural person; and $500,000 for a tier 3 violation by any other person. The adjusted maximum penalties will be: $8,907 for tier 1 (natural person); $89,078 for tier 1 (other person); $89,078 for tier 2 (natural person); $445,390 for tier 2 (other person); $178,156 for tier 3 (natural person); and $890,780 for tier 3 (other person).

C. Other Technical Changes to the National Bank Chart and Federal Savings Association Chart

The OCC is making several minor technical edits to the national bank chart and Federal savings association chart. The OCC is amending the charts by adding a footnote to each chart, where appropriate, to clarify that for certain penalties the applicable statute provides that the penalty will be the *lesser of* a dollar adjusted penalty amount or 1 percent of the bank's total assets. The text of the new Federal savings association chart no longer includes reference to 12 U.S.C. 3349(b). This penalty is an example of penalties that do not themselves provide the amount of the penalty but rather cross-reference 12 U.S.C. 1818. Instead, the OCC is adding a footnote to the national bank chart (footnote 3) and the Federal savings association chart (footnote 3), where appropriate, explaining that statutes cross-referencing 12 U.S.C. 1818 are adjusted automatically when the penalty in section 1818 is adjusted for inflation.

---

[10] *See* OMB Guidance, at 3.

[11] For penalties established or last adjusted prior to 1914, the OMB Guidance states that agencies should use the multiplier for 1914. *See id.*, Table A, at 6.

[12] *See* 28 U.S.C. 2461 note, section 5(b)(2)(C); *see also* OMB Guidance, at 3.

[13] *See* OMB Guidance, at 4.

[14] *See* 28 U.S.C. 2461 note, section 4(c) and OMB Guidance, at 3.

[15] *See* Dodd-Frank Act, Public Law 111–203, Title XIV, section 1472, July 21, 2010, 124 Stat. 2187, *codified at* 15 U.S.C. 1639e(k).

[16] Securities Act of 1933, Title I of Public Law 73–22, enacted May 27, 1933, 48 Stat. 74, *codified at* 15 U.S.C. 77a, *et seq.*

[17] Securities Exchange Act of 1934, Public Law 73–291, enacted June 6, 1934, 48 Stat. 881, *codified at* 15 U.S.C. 78a, *et seq.*

[18] Investment Company Act of 1940, Public Law 76–768, enacted Aug. 22, 1940, 54 Stat. 789, *codified at* 15 U.S.C. 80a–1, *et seq.*

[19] Investment Advisers Act of 1940, Public Law 76–768, enacted Aug. 22, 1940, 54 Stat. 847, *codified at* 15 U.S.C. 80b–1, *et seq.*

The interim final rule also deletes §§ 19.240(c) and 109.103(d), which provided an effective date of July 6, 2012, for the amount of the penalties for violations of 42 U.S.C. 4012a(f)(5), as all the penalty amounts on the revised national bank chart and Federal savings association chart are now effective on the same date.

Finally, consistent with the 2015 Act, revised §§ 19.240(b) and 109.103(c) state that the penalties in the charts at §§ 19.240(a) and 109.103(c) apply only to penalties assessed on or after the effective date of this interim final rule, August 1, 2016.

2015 WORKSHEET—NATIONAL BANKS

U.S. Code citation	Tier (if applicable)	Maximum penalty on Nov. 2, 2015 (in dollars)	Year established or last adjusted	Amount when established or last adjusted	Inflation factor	Amount of increase (rounded to nearest dollar)	Adjusted maximum penalty (after rounding and comparison calculation) (in dollars)
12 U.S.C. 93(b)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 164	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,000	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 481	Per day	5,000	1989	5,000	1.89361	9,468	9,468
12 U.S.C. 504	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1817(j)(16).	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1818(i)(2).	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1, 425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1820(k)(6)(A)(ii).		275,000	2004	250,000	1.24588	311,470	311,470
12 U.S.C. 1832(c)		1,100	1973	1,000	5.21575	5,216	[20]2,750
12 U.S.C. 1884		110	1968	100	6.73762	674	[20]275
12 U.S.C. 1972(2)(F).	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 3110(a)		37,500	1991	25,000	1.73099	43,275	43,275
12 U.S.C. 3110(c)	Tier 1	3,200	1991	2,000	1.73099	3,462	3,462
	Tier 2	32,000	1991	20,000	1.73099	34,620	34,620
	Tier 3	1,425,000	1991	1,000,000	1.73099	1,730,990	1,730,990
12 U.S.C. 3909(d)(1).		1,100	1983	1,000	2.35483	2,355	2,355
15 U.S.C. 78u–2(b)	Tier 1 (natural person).	7,500	1990	5,000	1.78156	8,908	8,908
	Tier 1 (other person).	70,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (natural person).	70,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (other person).	350,000	1990	250,000	1.78156	445,390	445,390
	Tier 3 (natural person).	140,000	1990	100,000	1.78156	178,156	178,156
	Tier 3 (other person).	700,000	1990	500,000	1.78156	890,780	890,780
15 U.S.C. 1639e(k)	First violation	10,000	2010	10,000	1.08745	10,875	10,875
	Subsequent violation.	20,000	2010	20,000	1.08745	21,749	21,749
42 U.S.C. 4012a(f)(5).	Per violation	2,000	2012	2,000	1.02819	2,056	2,056

2015 WORKSHEET—FEDERAL SAVINGS ASSOCIATIONS

U.S. Code citation	Tier (if applicable)	Maximum penalty on Nov. 2, 2015 (in dollars)	Year established or last adjusted	Amount when established or last adjusted	Inflation factor	Amount of increase (rounded to nearest dollar)	Adjusted maximum penalty (after rounding and comparison calculation) (in dollars)
12 U.S.C. 1464(v)	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,500	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,500	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1467(d)		7,500	1989	5,000	1.89361	9,468	9,468
12 U.S.C. 1467a(r)	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,500	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1817(j)(16).	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1818(i)(2).	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,375,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1820(k)(6)(A)(ii).		275,000	2004	250,000	1.24588	311,470	311,470
12 U.S.C. 1832(c)		1,000	1973	1,000	5.21575	5,216	[21] 2,500
12 U.S.C. 1884		110	1968	100	6.73762	674	[21] 275
12 U.S.C. 1972(2)(F).	Tier 1	5,000	1989	5,000	1.89361	9,468	9,468
	Tier 2	25,000	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,000,000	1989	1,000,000	1.89361	1,893,610	1,893,610
15 U.S.C. 78u–2(b)	Tier 1 (natural person).	5,000	1990	5,000	1.78156	8,908	8,908
	Tier 1 (other person).	50,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (natural person).	50,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (other person).	250,000	1990	250,000	1.78156	445,390	445,390
	Tier 3 (natural person).	100,000	1990	100,000	1.78156	178,156	178,156
	Tier 3 (other person).	500,000	1990	500,000	1.78156	890,780	890,780
15 U.S.C. 1639e(k)	First violation	10,000	2010	10,000	1.08745	10,875	10,875
	Subsequent violations.	20,000	2010	20,000	1.08745	21,749	21,749
42 U.S.C. 4012a(f)(5).	Per violation	2,000	2012	2,000	1.02819	2,056	2,056

III. Request for Comments

The 2015 Act requires the OCC to adjust the CMPs that it has jurisdiction to administer through an interim final rule. The 2015 Act also dictates the method by which the amount of the initial catch-up adjustment for each CMP must be calculated. As noted in the OMB Guidance, agencies are not required to complete a notice-and-comment process prior to publication of this interim final rule in the **Federal Register.**[22] However, the OCC invites comments on all aspects of this interim final rule. Commenters are specifically encouraged to identify any technical issues raised by the rule, including identifying any CMPs that may have been unintentionally omitted from this rulemaking.

IV. Regulatory Analysis

A. Delayed Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[23] (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this interim final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

The Administrative Procedure Act generally requires an agency to publish a rule 30 days prior to its effective date.[24] This interim final rule satisfies

---

[20] Because the 2015 Act caps the amount of the initial inflation adjustment (catch-up adjustment) at 150 percent, the catch-up adjustment cannot exceed 250 percent of the penalty level(s) in effect on the date the 2015 Act was enacted (*i.e.,* November 2, 2015).

[21] Because the 2015 Act caps the amount of the initial inflation adjustment (catch-up adjustment) at 150 percent, the catch-up adjustment cannot exceed 250 percent of the penalty level(s) in effect on the date the 2015 Act was enacted (*i.e.,* November 2, 2015).

[22] *See* OMB Guidance, at 3.

[23] 12 U.S.C. 4802.

[24] 5 U.S.C. 553(d).

that requirement. It also satisfies the requirement in the 2015 Act to publish the initial interim final rule no later than July 1, 2016, with an effective date no later than August 1, 2016.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[25] Because the 2015 Act requires agencies' catch-up adjustments to be made through an interim final rule, the OCC is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim final rule.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 [26] requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because the OCC is not publishing a notice of proposed rulemaking, this interim final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 109

Administrative practice and procedure, Federal savings associations, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is set forth as follows:

U.S. Code citation	Description and tier (if applicable)	Maximum penalty amount (in dollars) [1]
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 164	Violation of Reporting Requirements:	
	Tier 1	3,787
	Tier 2	37,872
	Tier 3	[2] 1,893,610
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination (national bank)	9,468
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 1818(i)(2) [3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	311,470
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties:	
	Per violation	2,750
12 U.S.C. 1884	Violation of the Bank Protection Act	275
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies):	43,275
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies):	
	Tier 1	3,462
	Tier 2	34,620
	Tier 3	[2] 1,730,990
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,355

---

[25] 5 U.S.C. 601(2).

[26] 2 U.S.C. 1532.

U.S. Code citation	Description and tier (if applicable)	Maximum penalty amount (in dollars)[1]
15 U.S.C. 78u–2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	Tier 1 (natural person)—Per violation	8,908
	Tier 1 (other person)—Per violation	89,078
	Tier 2 (natural person)—Per violation	89,078
	Tier 2 (other person)—Per violation	445,390
	Tier 3 (natural person)—Per violation	178,156
	Tier 3 (other person)—Per violation	890,780
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	10,875
	Subsequent violations	21,749
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,056

(b) The maximum amount of each civilmoney penalty set forth in the chart in paragraph (a) of this section applies to penalties assessed on or after August 1, 2016.

PART 109—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 3. The authority citation for part 109 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817, 1818, 1820(k), 1829(e), 1832, 1884, 1972, 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(*l*), 78o–5, 78u–2, 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 4. Section 109.103 is amended by revising paragraph (c) to read as follows and by removing paragraph (d):

§ 109.103 Civil money penalties.

* * * * *

(c) *Maximum amount of civil money penalties.* The maximum amount of each civil money penalty in the chart below applies to penalties assessed on or after August 1, 2016:

U.S. Code citation	CMP description	Maximum penalty amount (in dollars)[1]
12 U.S.C. 1464(v)	Reports of Condition:	
	1st Tier	3,787
	2nd Tier	37,872
	3rd Tier	[2] 1,893,610
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	9,468
12 U.S.C. 1467a(r)	Late/Inaccurate Reports:	
	1st Tier	3,787
	2nd Tier	37,872
	3rd Tier	[2] 1,893,610
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 1818(i)(2)[3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	311,470
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties:	
	Per violation	2,500
12 U.S.C. 1884	Violation of the Bank Protection Act	275
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	9,468
	Tier 2	47,340
	Tier 3	[2] 1,893,610
15 U.S.C. 78u-2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	1st Tier (natural person)—Per violation	8,908
	1st Tier (other person)—Per violation	89,078

---

[1] The maximum penalty amount is per day, unless otherwise indicated.

[2] The maximum penalty amount for a national bank is the *lesser of* this amount or 1 percent of total assets.

[3] These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1639e(k), 1693o, 1681s, 1691c, and 1692*l*.

U.S. Code citation	CMP description	Maximum penalty amount (in dollars) [1]
	2nd Tier (natural person)—Per violation	89,078
	2nd Tier (other person)—Per violation	445,390
	3rd Tier (natural person)—Per violation	178,156
	3rd Tier (other person)—Per violation	890,780
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	10,875
	Subsequent violations	21,749
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,056

Dated: June 23, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–15376 Filed 6–30–16; 8:45 am]

BILLING CODE 4810–33–P

---

[1] The maximum penalty amount is per day, unless otherwise indicated.

[2] The maximum penalty amount for a savings association is the *lesser of* this amount or 1 percent of total assets.

[3] These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1639e(k), 1693o, 1681s, 1691c, and 1692*l*.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209 and 1250

RIN 2590–AA88

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing this interim final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. If, prior to the effective date of the interim final rule, FHFA does not receive any comments from which FHFA concludes that the rule should be revised, this rule will become final without further action by FHFA.

DATES: *Effective date:* August 1, 2016.

Comment date: Comments on the interim final rule must be received prior to August 1, 2016.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA88, by any of the following methods:

Agency Web site: www.fhfa.gov/open-for-comment-or-input.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include "RIN 2590–AA88" in the subject line of the message.

Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA88, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA88, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, or phone number, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Stephen E. Hart, Deputy General Counsel, at (202) 649–3053, *Stephen.Hart@fhfa.gov,* or Frank R. Wright, Senior Counsel, at (202) 649–3087, *Frank.Wright@fhfa.gov* (not toll-free numbers); Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is an independent agency of the Federal government and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the Federal Home Loan Banks (collectively, the Banks), and the Banks' Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).[1] FHFA oversees the Enterprises and Banks (collectively, the regulated entities) to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules, and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.[2]

Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure regulation (12 CFR part 1209) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.[3] FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the

---

[1] *See* Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Public Law 102–550, 106 Stat. 4078 (Oct. 28, 1992) as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Public Law 110–289, 122 Stat. 2654, sections 1101 *et seq.* (July 30, 2008).

[2] *See* Safety and Soundness Act, 12 U.S.C. 4513 and 4631–4641.

[3] *See* 12 CFR part 1209.

Enterprises.[4] FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed $150,000.[5]

The Adjustment Improvements Act

The Federal Civil Penalties Inflation Adjustment Act of 1990 ("Inflation Adjustment Act"), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("Adjustment Improvements Act"), requires FHFA, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.[6] The Adjustment Improvements Act requires agencies to make an initial "catch-up" adjustment of their CMPs upon the statute's enactment, and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.[7]

The Adjustment Improvements Act provides that the initial catch-up adjustment must be implemented by an interim final rule and will be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October 2015 and the CPI–U for the month of October in the year that the civil money penalty was established or adjusted under a provision of law other than the Inflation Adjustment Act. Previous inflation adjustments made under the Inflation Adjustment Act prior to the Adjustment Improvements Act are not considered in making the catch-up adjustment.[8] In the future, annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of the adjustment and the October CPI–U for the year before that.

II. Differences Between the Federal Home Loan Banks and the Enterprises

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability (12 U.S.C. 4513(f)).[9] The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this interim final rule is appropriate. In sum, the five differences identified in section 1313(f) of the Safety and Soundness Act do not require a different enforcement regulation for the Banks than for the Enterprises, and in any event, the inflation adjustments effected by the interim final rule are mandated by law.

III. Description of the Rule

This interim final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this interim final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.[10] This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. FHFA has adjusted the maximum amounts for penalties under the Program Fraud Civil Remedies Act in a separate rule required by that Act, which was also published today in this edition of the **Federal Register**.

The Adjustment Improvements Act directs federal agencies to calculate each initial catch-up CMP adjustment as the percent change between the CPI–U for October 2015 and the CPI–U for October of the calendar year in which the amount of each CMP was set.[11] The maximum CMP amounts for FHFA penalties under 12 U.S.C. 4636 were set in 2008.[12] Since FHFA is making this round of catch-up adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2008, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI–U for October 2008 with the CPI–U for October 2015, resulting in an inflation factor of 1.09819. For each maximum CMP amount, the product of this inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.[13] The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	10,000	982	10,982
12 U.S.C. 4636(b)(2)	Second Tier	50,000	4910	54,910
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party and Regulated entity).	2,000,000	196,380	2,196,380

---

[4] *See* 12 CFR part 1250.

[5] *See generally*, 31 U.S.C. 3801 *et seq.*

[6] *See* 28 U.S.C. 2461 note.

[7] The Adjustment Improvements Act superseded the Debt Collection Improvement Act of 1996, which was used to prepare FHFA's Civil Money Penalty Inflation Adjustment rule, published at 81 FR 8369 (February 22, 2016.).

[8] Earlier inflation adjustments such as those issued in 81 FR 8369 are not considered in determining the amount of the catch-up adjustment.

[9] So in original; no paragraphs (d) and (e) were enacted. *See* 12 U.S.C.A. 4513 n 1.

[10] *See, e.g.*, 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013–03 (May 31, 2013).

[11] For the initial adjustment under the Adjustment Improvements Act a CMP is considered to have been set in the calendar year during which the amount of such CMP was established or adjusted under a provision of law other than the Inflation Adjustment Act.

[12] *See* 12 U.S.C. 4636.

[13] 28 U.S.C. 2461 note.

The CMP for FHFA penalties under the Flood Insurance regulation were set in 2009.[14] Since FHFA is making this round of adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2009, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI–U for October 2009 with the CPI–U for October 2015, resulting in an inflation factor of 1.10020. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	485	49	534
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year.	140,000	14,028	154,028

IV. Regulatory Impact

Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this interim final rule are unnecessary under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This rulemaking conforms with and is consistent with the statutory directive set forth in the Inflation Adjustment Act. As a result, there are no issues of policy discretion about which to seek public comment. Furthermore, the rule is mandated by the Adjustment Improvements Act to be adopted in interim final form. Accordingly, FHFA is issuing the amendments as an interim final rule.

In addition, FHFA finds good cause to make this rule effective thirty days after publication of this document in the **Federal Register** under the APA. The rule adjusts the amount of each CMP tier as dictated by the Inflation Adjustment Act, and, as noted above, is mandated by the Adjustment Improvements Act to be adopted as an interim final rule, presumptively with no greater delayed effective date than the APA otherwise provides.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[15] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have "a significant economic impact on a substantial number of small entities." However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA,[16] and FHFA is required by statute to issue this rule as an interim final rule. As a result FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this interim final rule.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

List of Subjects

12 CFR Part 1209

Administrative practice and procedure, Penalties.

12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the **SUPPLEMENTARY INFORMATION** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

PART 1209—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 554, 556, 557, and 701 *et seq.*; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581–4588, 4631–4641; and 28 U.S.C. 2461 note.

■ 2. Revise § 1209.80 to read as follows:

§ 1209.80 Inflation adjustments.

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	$10,982
12 U.S.C. 4636(b)(2)	Second Tier	54,910
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	2,196,380

■ 3. Revise § 1209.81 to read as follows:

§ 1209.81 Applicability.

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after August 1, 2016.

PART 1250—FLOOD INSURANCE

■ 4. The authority citation for part 1250 continues to read as follows:

---

[14] *See* 74 FR 2347, 2349 (Jan. 15, 2009).

[15] 5 U.S.C. 603.

[16] 5 U.S.C. 603(a), 604(a).

Authority: 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

■ 5. Revise § 1250.3(c) to read as follows:

§ 1250.3 Civil money penalties.

* * * * *

(c) *Amount.* The maximum civil money penalty amount is $485 for each violation that occurs before August 1, 2016, with total penalties not to exceed $140,000. For violations that occur on or after August 1, 2016, the civil money penalty under this section may not exceed $534 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed $154,028.

* * * * *

Dated: June 27, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–15619 Filed 6–30–16; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1217

RIN 2590–AA76

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting an interim final rule to implement the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*) (PFCRA), by establishing administrative procedures for imposing civil penalties and assessments against persons who make false, fictitious, or fraudulent claims or written statements to FHFA in the context of its contracting or employment activities, where the amount of money or the value of property or services involved or requested from FHFA is $150,000 or less. FHFA previously issued a notice of proposed rulemaking to implement PFCRA. This rule is issued as an interim final rule rather than as a final rule because it increases the maximum penalty amount set forth in the proposed rule as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Adjustment Improvements Act), and that Act also requires that such "catch up" adjustments be published in the form of an interim final rule. If, prior to the effective date of the interim final rule, FHFA does not receive any comments from which FHFA concludes that the rule should be revised, this rule will become final without further action by FHFA.

DATES: *Effective Date:* August 1, 2016.

Comment Date: Comments on the interim final rule must be received prior to August 1, 2016.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA76, by any of the following methods:

Agency Web site: www.fhfa.gov/open-for-comment-or-input.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include "RIN 2590–AA76" in the subject line of the message.

Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA76, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA76, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW., Washington, DC 20219.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, or phone number, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Maura Dundon, Assistant General Counsel, Office of the General Counsel, (202) 649–3961, *Maura.Dundon@fhfa.gov,* or Ellen Bailey, Managing Associate General Counsel, Office of General Counsel, (202) 649–3056, *Ellen.Bailey@fhfa.gov,* 400 Seventh Street SW., Eighth Floor, Washington, DC 20219 (not toll free numbers). The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*) (PFCRA) requires FHFA, as an "authority," to establish by rule procedures for imposing civil penalties and assessments on any person who makes a false claim for property, services, or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed $150,000.[1] A "claim" as defined in the Act includes a request, demand, or submission for property, services, or money from FHFA or a party to a contract with FHFA, including money representing benefits.[2] A "statement" is any representation, certification, affirmation, document, record, or accounting or bookkeeping entry with respect to a claim, a contract or a bid or proposal for a contract with FHFA, or a benefit from FHFA.[3] For covered claims and statements, PFCRA provides an administrative remedy as an alternative to judicial action, where the Department of Justice (DOJ) has declined to prosecute under the civil False Claims Act, 31 U.S.C. 3729.[4]

PFCRA establishes a process of (a) investigation by the "investigating official," who, by statute, is the Inspector General (IG) of the agency or a designee of the IG; (b) review by the agency's "reviewing official," designated by the agency head, to determine if adequate evidence of liability exists;[5] and (c) review by DOJ. If the Attorney General approves use of the PFCRA process, PFCRA authorizes the reviewing official to initiate an action by providing notice to the person alleged to be liable; if a hearing on the record is requested, it is before a "presiding official," which by statute is an Administrative Law Judge (ALJ) appointed or detailed for such purpose.[6] PFCRA also establishes appeal rights to the agency head by any person determined by an ALJ to be liable, and further review is available by a U.S. District Court.[7]

---

[1] *See* 31 U.S.C. 3801(a)(1)(C) and 3803(g); *see also* 5 U.S.C., App. 3, 11(2).

[2] 31 U.S.C. 3801(a)(3).

[3] *Id.* at section 3801(a)(9).

[4] *See* S.Rep. No. 99–212 at 6, 99th Cong., 1st Sess. 6 (1985) ("[E]xisting remedies are not adequate to cope with the problem of fraud in Federal programs. The Committee [of Governmental Affairs of the Senate], therefore, believes that an alternative administrative remedy is needed to adjudicate small-dollar false claim and statement cases that otherwise would not be initiated civilly.").

[5] 31 U.S.C. 3801(a)(8)(A) and 3803. The Director of FHFA has designated the General Counsel of FHFA as FHFA's reviewing official. *See* 80 FR 79719, 79719 n.5 (Dec. 23, 2015).

A civil penalty may be imposed for making a false claim or statement to an agency even if the agency did not provide any money, property, services, or benefits to any person as a result. Where money, property, services, or benefits were provided as a result of the person's false claim or statement, an "assessment" may also be imposed as the administrative equivalent of damages. The maximum amount of any civil penalty is established by PFCRA, subject to periodic adjustments for inflation, and PFCRA also caps any assessment at an amount equal to twice the value of the money, property, services, or benefits provided.[8]

Following PFCRA's enactment in 1986, an interagency task force was established under the leadership of the Department of Health and Human Services to develop model implementing regulations by all affected agencies and departments. This action was consistent with the expectation that "regulations would be substantively uniform throughout the government, except as necessary to meet the specific needs of a particular agency or program." [9] For that reason, FHFA reviewed the PFCRA rules of other departments and agencies and has modeled its proposed and interim final rule on the final rules of the Federal Deposit Insurance Corporation (FDIC) and Department of Housing and Urban Development (HUD).[10] The FDIC rule was employed because, like FHFA, FDIC is a federal financial safety and soundness regulator. FHFA's supervisory, regulatory, enforcement, and resolution powers are similar to FDIC's, and both FDIC and FHFA have express independent litigating authority and authority to bring administrative actions for civil money penalties for false claims or statements made to them by their regulated institutions or entities and affiliated parties separate and apart from authority provided by PFCRA. The HUD rule was employed as it provides a structural model and an established operational approach.

B. Proposed Rule

On December 23, 2015, FHFA published a proposed rule to implement PFCRA.[11]

Similar to the FDIC in its final rule, FHFA proposed that its PFCRA rule would apply only to FHFA's employment and contracting activities, and not to FHFA's supervisory, regulatory, enforcement, conservatorship, or receivership activities because other civil and administrative remedies available to FHFA are adequate to redress fraud in the areas not covered. FHFA noted in the notice of proposed rulemaking that it intended that the PFCRA administrative process not be confused with ordinary Agency procedures available in regulatory or conservatorship situations.[12] FHFA also proposed a process to investigate and adjudicate PFCRA claims in accordance with PFCRA's procedural requirements.[13] Should a PFCRA case proceed to adjudication by an ALJ, FHFA proposed to use its existing Rules of Practice and Procedure, which were incorporated by reference.[14]

FHFA's proposed rule also established a maximum civil penalty that reflected an inflation adjustment to the statutory PFCRA civil penalty, addressed an assessment in lieu of damages of up to twice the amount of the false, fictitious, or fraudulent claim, and stated that the PFCRA rule would not preclude the imposition of any other authorized actions or sanctions currently employed by FHFA, including debarment and suspension of contractors.[15]

FHFA invited comments on all aspects of the proposed rule during a 60-day comment period that closed on February 22, 2016. FHFA received one comment from a private citizen that did not address the substance of the proposed rule.

II. Analysis of Final Rule; Publication as an Interim Final Rule

FHFA has determined that no changes to the scope and process of the rule as proposed are necessary in light of comments received. Following publication of the proposed rule, however, FHFA reviewed provisions of the recently enacted Adjustment Improvements Act and has determined that further adjustment of the maximum penalty is required.[16] Both the requirement that the penalty be adjusted and the adjustment formula to be applied are set forth in the Adjustment Improvements Act. Further, the Adjustment Improvements Act requires agencies to publish adjustments in accordance with that Act in an interim final rule.[17] Consequently, FHFA is publishing this rule as an interim final rule to meet that requirement. If, prior to the effective date of the interim final rule, FHFA does not receive any comments from which FHFA concludes that the rule should be revised, this rule will become final without further action by FHFA.

Scope. As does the FDIC's PFCRA rule, FHFA's interim final rule states that it applies to FHFA's employment and contracting activities and does not apply to FHFA's supervisory, regulatory, enforcement, conservatorship, or receivership activities because other civil and administrative remedies available to FHFA with regard to its regulated entities (Fannie Mae, Freddie Mac (together, the Enterprises), any affiliate of an Enterprise, and the Federal Home Loan Banks) and the Office of Finance of the Federal Home Loan Bank System (OF) or any other entity-affiliated party are adequate to redress fraud in the areas not covered. This statement of scope is almost identical to the scope set forth by the FDIC in its PFCRA rule, at 12 CFR 308.500(c).[18]

In the event a regulated entity, any affiliate of an Enterprise, or the OF or any other entity-affiliated party made a false claim on or provided false information to FHFA in its supervisory, regulatory, enforcement, conservatorship, or receivership activities, FHFA has other available administrative remedies and independent litigating authority. *See generally* 12 U.S.C. 4513, 4514, 4585, and 4636. As a result, even without PFCRA, FHFA could pursue administrative or judicial remedies for such false claims or statements on its own behalf with similar or greater effect.

---

[6] 31 U.S.C. 3803.

[7] *Id.; see also* section 3805.

[8] *Id.* at section 3802(a)(1) and (3).

[9] *See* S. Rep. No. 99–212 at 12; *see also* 52 FR 27423 (July 21, 1987).

[10] *See* 12 CFR part 308, subpart T (FDIC) and 24 CFR part 28 (HUD) (2015).

[11] *See* 80 FR 79719.

[12] *Id.* at 79720.

[13] *Id.* at 79720–79721.

[14] *Id.* at 79721.

[15] *Id.*

[16] Section 701, Public Law 114–74 (Nov. 2, 2015), codified as 28 U.S.C. 2461 note.

[17] 28 U.S.C. 2461 note, section 4(b)(1)(A).

[18] FDIC's PFCRA rule applies to FDIC's employment and contracting activities but does not apply to false claims or statements made in connection with FDIC's regulatory, supervision, enforcement, insurance, receivership or liquidation responsibilities. *See* 12 CFR 308.500(c). FDIC explained that, as so limited, its rule was consistent with PFCRA's underlying purpose "to provide federal agencies with an administrative remedy for 'small dollar fraud' cases for which there is no other remedy because the cases are too small for the [DOJ] to prosecute," and distinguished FDIC's circumstances from those of other agencies based on its other available administrative remedies and on its independent litigating authority. 65 FR 52352 (Aug. 29, 2000) (proposed rule); *see also* 66 FR 9187, 9188 (Feb. 7, 2001) (final rule).

FHFA also notes that its PFCRA rule would not apply to false claims or statements made by any person to any regulated entity, an affiliate of an Enterprise, or the OF. PFCRA generally does not apply to false claims or statements made to private companies conducting private business activities, unless those companies are allocating money, property, services or benefits where the actual provider is the United States government.[19] Because the regulated entities, including any affiliate of an Enterprise, and the OF do not receive United States government money, property, services, or benefits from FHFA, FHFA's interim final rule implementing PFCRA does not apply to any false claim or statement by any person to any regulated entity, including any affiliate of an Enterprise, or the OF.[20]

Process. Pursuant to PFCRA and FHFA's interim final rule, FHFA's "investigating official" (under PFCRA, the FHFA IG or the IG's designee) is responsible for initiating an investigation of any claim or statement believed to be false.[21] The investigating official submits a report containing information about the case (including exculpatory information), the potential violation, and other relevant information relating to liability to the General Counsel of FHFA, the "reviewing official" designated by the Director of FHFA.[22] The reviewing official (or the designee thereof) would then make a determination of whether there is adequate evidence of liability. If so, the reviewing official would provide written notice to the Attorney General of the intent to refer the allegations to an ALJ as presiding officer. Under the terms of PFCRA and the authority of the Attorney General, DOJ could elect to bring an action for civil relief under other applicable law, or the FHFA action may be deferred or postponed to avoid interference with a criminal investigation or prosecution by the Attorney General.

If the Attorney General approves the use of PFCRA, FHFA's reviewing official may refer the case to an ALJ as presiding officer. To initiate the action, the reviewing official must provide notice to any person who is subject to the allegation of liability. That person may then request a formal hearing on the record and is entitled to all exculpatory information in the possession of the investigating official or the reviewing official. If a hearing is requested, the ALJ would determine liability based on the preponderance of the evidence and the amount of any penalty (and, if appropriate, any assessment) to be imposed. The interim final rule implements statutory provisions for an appeal of the ALJ's decision to the Director of FHFA as the "authority head" and then to the appropriate U.S. District Court.

FHFA's interim final rule provides for hearing and appeal rights of persons subject to allegations of liability for any penalty or assessment under PFCRA. FHFA currently has Rules of Practice and Procedure in place at title 12 of the Code of Federal Regulations, part 1209, which establish evidentiary, hearing, and appeals procedures and processes for hearings on the record at FHFA. Similar to the HUD rule, FHFA's PFCRA rule cross-references its existing administrative enforcement procedures for purposes of PFCRA actions. FHFA's existing rules of procedure were issued subject to a notice and comment rulemaking process and, by using them for purposes of any PFCRA action, FHFA ensures due process and procedural consistency.

Maximum Penalty Amount. PFCRA establishes a maximum civil penalty of $5,000 for each violation of the Act.[23] That amount is required to be adjusted for inflation by the Adjustment Improvements Act, which also sets forth the formula for the initial, or "catch up," adjustment.[24] FHFA has incorporated that adjustment into its interim final rule, resulting in a maximum penalty amount of $10,781. This is an increase in the maximum penalty amount initially set forth in the proposed rule, but it is required to comply with the Adjustment Improvements Act. This is the only substantive change FHFA has made to the rule as proposed.[25]

The Adjustment Improvements Act also requires that such "catch-up" adjustments be published in the form of an interim final rule. This rule is issued as an interim final rule, rather than as a final rule, only for purposes of meeting that requirement. If, prior to the effective date of the interim final rule, FHFA does not receive any comments from which FHFA concludes that the rule should be revised, this rule will become final without further action by FHFA.

III. Paperwork Reduction Act

The interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, including small businesses and or small organizations, must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[26] FHFA has considered the impact of the interim final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the interim final rule is not likely to have a significant economic impact on a substantial number of small entities, because the regulation merely fulfills a statutory requirement under PFCRA to establish procedures for imposing civil penalties and assessments against those persons who have violated existing prohibitions against making fraudulent claims or statements to FHFA in its contracting and employment activities, and does not alter any underlying requirements or prohibitions or impose any new requirements or prohibitions on persons subject to regulation by FHFA.

---

[19] 31 U.S.C. 3801(a)(3)(B). Application of PFCRA does not require or imply the establishment of a principal-agent relationship.

[20] If a regulated entity, an affiliate of an Enterprise, or the OF were to allocate United States government money, property, services, or benefits to any person on behalf of another agency or department of the Federal government, then any PFCRA rule of that other agency or department may be applicable.

[21] *See* 31 U.S.C. 3801(a)(4)(A).

[22] *See* 31 U.S.C. 3801(a)(8)(A), requiring the agency head to designate a reviewing official; *see also* footnote 5, *supra.*

[23] *See* 31 U.S.C. 3802(a).

[24] 28 U.S.C. 2461 note. The Adjustment Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 ("1990 Adjustment Act"). To establish the maximum civil penalty in its proposed rule, FHFA applied the initial adjustment formula set forth in the 1990 Adjustment Act. That formula has been repealed by, and replaced with a "catch up" adjustment formula set forth in, the Adjustment Improvements Act.

[25] This interim final rule also corrects a typographical error in the rule text at section 1217.9: a reference to "subpart B" of FHFA's Rules of Practice and Procedure at 12 CFR part 1209 that should have been to "subpart C," where other sections of the proposed rule correctly referred to "subpart C" (*see* sections 1217.1(a)(2) and 1217.6(b)(8), 80 FR at 79721 and 79723) and, in read context, the reference to "subpart C" was clearly intended.

[26] *See* 5 U.S.C. 605(b).

List of Subjects in 12 CFR Part 1217

Civil remedies, Program fraud.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, and under the authority of 12 U.S.C. 4511, 4513, 4514, 4526, 4585 and 4636 and 31 U.S.C. 3803, FHFA amends subchapter A of Chapter XII of Title 12 of the Code of Federal Regulations by adding a new Part 1217 to read as follows:

PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

1217.1 Purpose and scope.
1217.2 Definitions.
1217.3 Basis for civil penalties and assessments.
1217.4 Investigation.
1217.5 Request for approval by the Department of Justice.
1217.6 Notice.
1217.7 Response.
1217.8 Statute of limitations.
1217.9 Hearings.
1217.10 Settlements.

Authority: 12 U.S.C. 4501; 12 U.S.C. 4526, 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 1217.1 Purpose and scope.

(a) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to FHFA or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted in accordance with the Administrative Procedure Act pursuant to part 1209, subpart C, of this chapter.

(b) *Scope.* This part applies only to persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to FHFA or to those acting on its behalf in connection with FHFA employment matters and FHFA contracting activities. It does not apply to false claims or statements made in connection with matters or activities related to FHFA's supervisory, regulatory, enforcement, conservatorship, or receivership responsibilities, as other civil and administrative actions available to FHFA to redress fraud in such areas provide for remedies that are equal to or exceed those available through this part.

§ 1217.2 Definitions.

As used in this part:

Ability to pay is determined based on a review of the respondent's resources available both currently and prospectively, from which FHFA could ultimately recover the total penalty, and as appropriate, assessment, which may be predicted based on historical evidence.

Assessment means a monetary penalty that is in addition to a civil penalty and may be imposed if FHFA has made any payment, transferred property, or provided services for a claim that is determined to be in violation of paragraph (a)(1) of § 1217.3. An assessment may not exceed an amount that is twice the amount of the claim or portion of the claim determined to be in violation of paragraph (a)(1) of § 1217.3. A civil penalty other than an assessment may be imposed whether or not FHFA has made a payment, transferred property, or provided services in response to the false claim or statement.

Benefit means anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, or status.

Claim means any request, demand, or submission:

(1) Made to FHFA for property, services, or money (including money representing benefits);

(2) Made to a recipient of property, services, or money from FHFA or to a party to a contract with FHFA:

(i) For property or services, if FHFA:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to FHFA, which has the effect of decreasing an obligation to pay or account for property, services, or money.

Investigating official means the FHFA Inspector General, or an officer or employee of the FHFA Office of Inspector General designated by the FHFA Inspector General.

Knows or has reason to know. (1) For purposes of establishing liability under 31 U.S.C. 3802 and this part, means that a person, with respect to a claim or statement:

(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement.

(2) No proof of specific intent to defraud is required for purposes of establishing liability under 31 U.S.C. 3802 or this part.

Makes a claim or statement includes making, presenting, or submitting the claim or statement and causing the claim or statement to be made, presented, or submitted.

Notice means the charging document served by FHFA to commence an administrative proceeding to impose a civil penalty and, if appropriate, an assessment under chapter 38 of subtitle III of title 31, U.S.C., and this part.

Person means any individual, partnership, corporation, association, or private organization.

Presiding officer means an administrative law judge appointed under 5 U.S.C. 3105 or detailed to FHFA under 5 U.S.C. 3344.

Reasonable prospect of collecting an appropriate amount of penalties and assessments is determined based on a generalized analysis made by the reviewing official, based on the limited information available in the report of investigation for purposes of determining whether the allocation of FHFA's resources to any particular action is appropriate.

Report of investigation means a report containing the findings and conclusions of an investigation under chapter 38 of subtitle III of title 31, U.S.C., by the investigating official, as described in § 1217.4.

Respondent means any person alleged to be liable for a civil penalty or assessment under § 1217.3.

Reviewing official means the General Counsel of FHFA, as so designated by the Director pursuant to 31 U.S.C. 3801(a)(8)(A).

Statement means, unless the context indicates otherwise, any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for) a contract with, or a bid or proposal for a contract with, or benefit from, FHFA or any State, political subdivision of a State, or other

party, if FHFA provides any portion of the money or property under such contract or benefit, or if FHFA will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such benefit.

§ 1217.3 Basis for civil penalties and assessments.

(a) *False, fictitious or fraudulent claims.* (1) A civil penalty of not more than $10,781 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a written statement that:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Omits a material fact and, as a result of the omission, is false, fictitious, or fraudulent, where the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iii) Is for payment for the provision of property or services to FHFA which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim for purposes of this part.

(3) A claim shall be considered made to FHFA, a recipient, or party when the claim is actually made to an agent, fiscal intermediary, or other entity, acting for or on behalf of FHFA, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty, without regard to whether the property, services, or money actually is delivered or paid.

(5) There is no liability under this part if the amount of money or value of property or services claimed exceeds $150,000 as to each claim that a person submits. For purposes of this paragraph (a), a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the FHFA has made any payment, transferred property, or provided services for a claim, then FHFA may make an assessment against a person found liable in an amount of up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section. This assessment is in addition to the amount of any civil penalty imposed.

(b) *False, fictitious or fraudulent statements.* (1) A civil penalty of up to $10,781 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

(i) The person knows or has reason to know:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Omits a material fact and is false, fictitious, or fraudulent as a result of such omission, where the person making, presenting, or submitting such statement has a duty to include such material fact; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to FHFA when the statement is actually made to an agent, fiscal intermediary, or other entity acting for or on behalf of FHFA.

(c) *Joint and several liability.* A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

§ 1217.4 Investigation.

(a) *General.* FHFA may initiate an action under chapter 38 of subtitle III of title 31, U.S.C., and this part against a respondent only upon an investigation by the investigating official.

(b) *Subpoena.* Pursuant to 31 U.S.C. 3804(a), the investigating official may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) *Investigation report.* If the investigating official concludes that an action under chapter 38 of subtitle III of title 31, U.S.C., and this part may be warranted, the investigating official shall prepare a report containing the findings and conclusions of the investigation, including:

(1) A description of the claim or statement at issue;

(2) The evidence supporting the allegations;

(3) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1217.3; and

(4) Any exculpatory or mitigating circumstances that may relate to the claim or statement.

(d) *Referrals to the Attorney General.* The investigating official may refer allegations directly to the Department of Justice for civil relief under other applicable law, as appropriate, or may defer or postpone submitting a report to the reviewing official to avoid interference with a criminal investigation or prosecution.

§ 1217.5 Request for approval by the Department of Justice.

(a) *General.* If the reviewing official determines that the report of investigation supports an action under this part, the reviewing official must submit a written request to the Department of Justice for approval to issue a notice under § 1217.6.

(b) *Content of request.* A request under this section shall include:

(1) A description of the claim or statement at issue;

(2) The evidence supporting the allegations;

(3) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1217.3;

(4) Any exculpatory or mitigating circumstances that may relate to the claim or statement; and

(5) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Determining there is a reasonable prospect of collecting an appropriate amount of penalties and assessments is separate from determining ability to pay, and may not be considered in determining the amount of any penalty or assessment in any particular case.

§ 1217.6 Notice.

(a) *Commencement of action; notice.* Upon obtaining approval from the Department of Justice, the reviewing official may commence an action to establish liability of the respondent under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*) and this part. To commence an action, the reviewing official must issue a notice to the respondent of the allegations of liability against the respondent. The notice shall be mailed, by registered or certified mail, or shall be delivered through such other means by which delivery may be confirmed.

(b) *Notice contents.* The notice required under this section shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claim or statement

at issue, and the reasons why liability arises from that claim or statement;

(2) A statement that the required approval to issue the notice was received from the Department of Justice;

(3) The amount of the penalty and, if applicable, any assessment for which the respondent may be held liable;

(4) A statement that the respondent may request a hearing by submitting a written response to the notice;

(5) The addresses to which a response must be sent in accordance with § 1209.15 of this chapter;

(6) A statement that failure to submit an answer within 30 days of receipt of the notice may result in the imposition of the maximum amount of penalties and assessments sought, without right of appeal;

(7) A statement that the respondent must preserve and maintain all documents and data, including electronically stored data, within the possession or control of the respondent that may relate to the allegations; and

(8) A copy of this part 1217 and part 1209, subpart C of this chapter.

(c) *Obligation to preserve documents.* Upon the issuance of a notice under this section, FHFA and the respondent shall each preserve and maintain all documents and data, including electronically stored data, within their respective possession or control that may relate to the allegations in the complaint.

§ 1217.7 Response.

(a) *General.* (1) To obtain a hearing, the respondent must file a written response to a notice under § 1217.6:

(i) In accordance with § 1209.24 of this chapter; and

(ii) Not later than 30 days after the date of service of the notice.

(2) A timely filed response to a notice under § 1217.6 shall be deemed to be a request for a hearing.

(3) A response to a notice under § 1217.6 must include:

(i) The admission or denial of each allegation of liability made in the notice;

(ii) Any defense on which the respondent intends to rely;

(iii) Any reasons why the penalty and, if appropriate, any assessment should be less than the amount set forth in the notice; and

(iv) The name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Failure to respond.* If no response to a notice under this part is timely submitted, FHFA may file a motion for default judgment in accordance with § 1209.24(c) of this part.

§ 1217.8 Statute of limitations.

The statute of limitations for commencing a hearing under this part shall be tolled:

(a) If the hearing is commenced in accordance with 31 U.S.C. 3803(d)(2)(B) within 6 years after the date on which the claim or statement is made; or

(b) If the parties agree to such tolling.

§ 1217.9 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in subpart C of part 1209 of this chapter, governing actions in accordance with subchapter II of chapter 5, U.S.C. (commonly known as the Administrative Procedure Act).

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of any civil penalty and, if appropriate, any assessment, the presiding officer and, upon appeal, the Director or designee thereof, shall consider and state in his or her opinion any mitigating or aggravating circumstances. The amount of penalties and assessments imposed shall be based on the presiding officer's and the Director's or designee's consideration of evidence in support of one or more of the following factors:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the actual loss to FHFA as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the loss to FHFA;

(7) The potential or actual impact of the misconduct upon public health or safety or public confidence in the management of FHFA programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct;

(17) The respondent's ability to pay; and

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

(c) *Stays ordered by the Department of Justice.* If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General notifies the Director in writing that continuation of FHFA's action may adversely affect any pending or potential criminal or civil action related to the claim or statement at issue, the presiding officer or the Director shall stay the FHFA action immediately. The FHFA action may be resumed only upon receipt of the written authorization of the Attorney General.

§ 1217.10 Settlements.

(a) *General.* The reviewing official, on behalf of FHFA, and the respondent may enter into a settlement agreement under § 1209.20 of this chapter at any time prior to the issuing of a notice of final decision under § 1209.55 of this chapter.

(b) *Failure to comply.* Failure of the respondent to comply with a settlement agreement shall be sufficient cause for resuming an action under this part, or for any other judicial or administrative action.

Dated: June 27, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–15620 Filed 6–30–16; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4551; Directorate Identifier 2016–NE–07–AD; Amendment 39–18576; AD 2016–13–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A1–10, –710A2–20, and –710C4–11 turbofan engines. This AD requires removing the pawl carrier pivot pins, part number (P/N) BRR17117, from service and replacing them with parts eligible for installation. This AD was prompted by a seized low-pressure turbine (LPT) fuel shut-off pawl carrier caused by corrosion of the pawl carrier pivot pin. We are issuing this AD to prevent failure of the fuel shut-off mechanism, which could result in uncontained part release, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective August 5, 2016.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 7086 2673; fax: +49 (0) 33 7086 3276. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4551.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4551; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 1, 2016 (81 FR 18806). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Seizing of a fuel shut-off mechanism pawl carrier was reported. The subsequent investigation determined that corrosion of the pawl carrier pivot pin P/N BRR17117, was the failure cause.
>
> This condition, if not corrected, could lead to loss of the fuel shut-off mechanism functionality and loss of the engine over-speed protection, possibly resulting in release of high-energy debris, with consequent damage to, and/or reduced control of the airplane.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4551.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 18806, April 1, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information

RRD has issued Alert Service Bulletin (ASB) BR700–72–A101523, Revision 3, dated December 10, 2015. The service information describes procedures for replacing the pawl carrier pivot pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 4 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 hours per engine to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $860 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,460.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–12 Rolls-Royce Deutschland GmbH (Type Certificate previously held by Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Amendment 39–18576; Docket No. FAA–2016–4551; Directorate Identifier 2016–NE–07–AD.

(a) Effective Date

This AD becomes effective August 5, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to:

(i) Rolls-Royce Deutschland (RRD) BR700–710A1–10 engines with serial number (S/N) 11505 and below and with a low-pressure turbine (LPT) module, part number (P/N) M51–104 or P/N M51–111, installed;

(ii) RRD BR700–710A2–20 engines with S/N 12492 and below and with an LPT module, P/N M51–108 or P/N M51–111, installed;

(iii) RRD BR700–710C4–11 engines with S/N 15277 and below, with configuration standard 710C4–11 engraved on the engine data plate and with an LPT module, P/N M51–112, installed; and

(iv) RRD BR700–710C4–11 engines with S/N 15329 and below, with configuration standard 710C4–11/10 engraved on the engine data plate and with an LPT module, P/N M51–112, installed.

(2) Reserved.

(d) Reason

This AD was prompted by a seized LPT fuel shut-off pawl carrier caused by corrosion of the pawl carrier pivot pin. We are issuing this AD to prevent failure of the fuel shut-off mechanism, which could result in uncontained part release, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 6 months after the effective date of this AD, remove each pawl carrier pivot pin, P/N BRR17117, from service and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0034, dated February 24, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–4551.

(3) RRD Alert Service Bulletin BR700–72–A101523, Revision 3, dated December 10, 2015, can be obtained from RRD using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 7086 2673; fax: +49 (0) 33 7086 3276.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on June 23, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate,Aircraft Certification Service.

[FR Doc. 2016–15351 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–4234; Airspace Docket No. 16–ACE–3]

Amendment of Class E Airspace for the Following Kansas Towns; Belleville, KS; Johnson, KS; Marysville, KS; Pittsburg, KS; and Washington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Belleville Municipal Airport, Belleville, KS; Stanton County Municipal Airport, Johnson, KS; Marysville Municipal Airport, Marysville, KS; Atkinson Municipal Airport, Pittsburg, KS; and Washington County Veteran's Memorial Airport, Washington, KS. Decommissioning of non-directional radio beacons (NDBs), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made these actions necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also updates the geographic coordinates at Marysville Municipal Airport, Marysville, KS; and Atkinson Municipal Airport, Pittsburg, KS; and the name of Washington County Veteran's Memorial Airport (formerly Washington County Memorial Airport) to coincide with the FAAs aeronautical database.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Belleville Municipal Airport, Belleville, KS; Stanton County Municipal Airport, Johnson, KS; Marysville Municipal Airport, Marysville, KS; Atkinson Municipal Airport, Pittsburg, KS; and Washington County Veteran's Memorial Airport, Washington, KS.

History

On March 29, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace at Belleville Municipal Airport, Belleville, KS; Stanton County Municipal Airport, Johnson, KS; Marysville Municipal Airport, Marysville, KS; Atkinson Municipal Airport, Pittsburg, KS; and Washington County Veteran's Memorial Airport, Washington, KS (81 FR 17420) Docket No. FAA–2016–4234. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found an editorial error in the legal description for Marysville, KS; and the name of the town in the airspace designation and legal description for Atkinson Municipal Airport. These errors are corrected in this rule.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface by removing the approach extensions at Belleville Municipal Airport, Belleville, KS; Stanton County Municipal Airport, Johnson, KS; Marysville Municipal Airport, Marysville, KS; and Atkinson Municipal Airport, Pittsburg, KS, due to decommissioning of NDBs, removal of NDB approaches, and the implementation of RNAV standard instrument approach procedures at the airports. Also, controlled airspace at Washington County Veteran's Memorial Airport is reduced from a 7.3-mile radius to a 6.3-mile radius of the airport. This action also updates the geographic coordinates of Marysville Municipal Airport, Marysville, KS, and Atkinson Municipal Airport, Pittsburg, KS, as well as noting the correct town for Atkinson Municipal Airport. Additionally, this action notes the name of Washington County Veteran's Memorial Airport (formerly Washington County Memorial Airport) to coincide with the FAAs aeronautical database. This rule is necessary for the safety and management of IFR operations under standard instrument approach procedures at the above airports.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Belleville, KS [Amended]

Belleville Municipal Airport, KS
(Lat. 39°49′04″ N., long. 97°39′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Belleville Municipal Airport.

* * * * *

ACE KS E5 Johnson, KS [Amended]

Stanton County Municipal Airport, KS
(Lat. 37°35′07″ N., long. 101°43′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Stanton County Municipal Airport.

* * * * *

ACE KS E5 Marysville, KS [Amended]

Marysville Municipal Airport, KS
(Lat. 39°51′23″ N., long. 96°37′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marysville Municipal Airport.

* * * * *

ACE KS E5 Pittsburg, KS [Amended]

Pittsburg, Atkinson Municipal Airport, KS
(Lat. 37°26′58″ N., long. 94°43′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Atkinson Municipal Airport.

* * * * *

ACE KS E5 Washington, KS [Amended]

Washington County Veteran's Memorial
Airport, KS
(Lat. 39°44′07″ N., long. 97°02′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Washington County Veteran's Memorial Airport.

Issued in Fort Worth, Texas, on June 22, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–15406 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONATICS AND SPACE ADMINISTRATION

14 CFR Part 1214

[Docket No: NASA–2015–0010]

RIN 2700–AD98

Space Flight

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing a final rule for its regulations that govern International Space Station crewmembers, mementos aboard Orion and Space Launch System (SLS) missions, and the authority of the NASA Commander, and removes the Agency's policy on space flight participation and other policies that were relevant to the Space Shuttle. The revision to this rule is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open Government Web site at *http://www.nasa.gov/open/*.

DATES: *Effective:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Craig Salvas at (202)–358–2330, *craig.b.salvas@nasa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NASA published a proposed rule in the **Federal Register** at 80 FR 63474 on October 20, 2015, to amend its regulations that govern International Space Station crewmembers, mementos aboard Orion and Space Launch System (SLS) missions, and the authority of the NASA Commander and removes the Agency's policy on space flight participation and other policies that were relevant to the Space Shuttle. The Space Shuttle Program formally commenced in 1972. After a total of 135 flights, the last of which occurred in July 2011, the Space Shuttle was officially retired after 30 years of operation. During this period, the fleet and its crews carried out a large and varied number of tasks to meet the goals and objectives of the Nation's space program. These included the launch of large interplanetary probes, the performance of scientific experiments under microgravity conditions, the on-orbit servicing of the Hubble Space Telescope, and the assembly and resupply of the International Space Station. Functions previously performed by the Space Shuttle will now be done by many different spacecraft currently flying or in development, including vehicles owned by both the Government and the private sector.

NASA is currently developing a new human-rated spacecraft, the Orion, and launch system, the Space Launch System (SLS). The Orion and SLS are designed to conduct journeys into deep space. With the end of the Space Shuttle Program, many sections of this rule are no longer relevant and will be deleted. However, sections which have current or future application will be maintained and updated or amended as required.

Significant elements of part 1214, in its current form, govern the use and operation of the Space Shuttle and cover a diverse number of areas including requirements for reimbursement for Space Shuttle services to civil U.S. Government and foreign users, the flight of Payload Specialists and Space Flight Participants on Space Shuttle missions, reimbursement terms, and conditions for use of the Spacelab Module. Also covered in part 1214 are the rules for the NASA Astronaut Candidate Recruitment and Selection Program, the Code of Conduct for the International Space Station Crew, and the Authority of the Space Shuttle Commander.

The intent of these amendments is to repeal those portions of the regulation that, with the ending of the Space Shuttle Program, are no longer relevant. Sections that remain in effect will be amended because they are outdated. Other sections that are applicable to the Orion and SLS will also be amended. Provisions currently in force relating to approving mementoes for flight and preventing the use of mementoes for economic gain remain relevant and were incorrectly omitted from the proposed rule published on October 20, 2015. These provisions have been reincorporated in the final rule at 14 CFR 1214.601 and 1214.602, except for language relating to dimensions and areas specific to the Space Shuttle which have not been retained.

Discussion and Analysis

There were two public comments received in response to the proposed rule. Comments were supportive in nature and do not warrant any changes in the rule's language.

Statutory Authority

Section 1214 is established under the National Aeronautics and Space Act (Space Act) (51 U.S.C. 20101, *et seq.*).

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulation Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated as "not significant" under section 3(f) of Executive Order 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 U.S.C. 603). This rule updates these sections of the CFR to align with Federal guidelines and does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under Executive Order of 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space transportation and exploration.

For the reason stated in the preamble, NASA is amending 14 CFR part 1214 as follows:

PART 1214—SPACE FLIGHT

■ 1. The authority citation for part 1214 is revised to read as follows:

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

Subpart 1214.1—[Removed and Reserved]

■ 2. Remove and reserve subpart 1214.1, consisting of §§ 1214.100 through 1214.119.

Subpart 1214.2—[Removed and Reserved]

■ 3. Remove and reserve subpart 1214.2, consisting of §§ 1214.200 through 1214.207 and Appendices A and B.

Subpart 1214.3—[Removed and Reserved]

■ 4. Remove and reserve subpart 1214.300, consisting of §§ 1214.300 through 1214.306.

Subpart 1214.4—International Space Station Crew

■ 5. The authority citation for subpart 4 is revised to read as follows:

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

* * * * *

■ 6. Revise subpart 1214.6 to read as follows:

Subpart 1214.6—Mementos Aboard NASA Missions

Sec.
1214.600 Scope.
1214.601 Definitions.
1214.602 Policy.
1214.603 Official Flight Kit.
1214.604 Personal Preference Kit.
1214.605–1214.606 [Reserved]
1214.607 Media and public inquiries.
1214.608 [Reserved]
1214.609 Loss or theft.
1214.610 Violations.

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

Subpart 1214.6—Mementos Aboard NASA Missions

§ 1214.600 Scope.

This subpart establishes policy and procedures for carrying mementos on the NASA missions, with the exception of mementos and personal effects carried onboard the International Space Station (ISS).

§ 1214.601 Definitions.

Mementos. Flags, patches, insignia, medallions, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

§ 1214.602 Policy.

Premise. Mementos are welcome aboard NASA missions. However, they are flown as a courtesy—not as an entitlement. All mementos must be approved by the Associate Administrator for Human Exploration and Operations and are stowed only in an Official Flight Kit (OFK) or Personal Preference Kit (PPK).

(a) *Economic gain.* Items carried in an OFK or a PPK will not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fund-raising purpose. Items such as philatelic materials and coins that, by their nature, lend themselves to exploitation by the recipients, or create problems with respect to good taste; or that are large, bulky, or heavy items will not be approved for flight.

(b) [Reserved]

§ 1214.603 Official Flight Kit.

(a) *Purpose.* The Official Flight Kit (OFK) on a particular mission allows NASA, and other domestic and friendly foreign countries' organizations with NASA approval, to utilize mementos as awards and commendations or preserve them in museums or archives. No personal items will be carried in the OFK.

(b) *Approval of contents.* At least 120 days prior to the scheduled launch of a particular mission, an authorized representative of each organization desiring mementos to be carried on a flight in the OFK must submit a letter or request describing the item(s) to be flown and the intended purpose or distribution. Letters should be directed to the Associate Administrator for Human Exploration and Operations, NASA Headquarters, Washington DC 20546.

§ 1214.604 Personal Preference Kit.

(a) *Purpose.* The Personal Preference Kit (PPK) enables persons on a particular mission to carry personal items for use as mementos. Only those individuals actually accompanying such flights may request authorization to carry personal items as mementos.

(b) *Approval of content.* At least 60 days prior to the scheduled launch of a particular mission, each person assigned to the flight who desires to carry items in a PPK must submit a proposed list of items and their recipients to the Associate Director, NASA Johnson Space Center. The Associate Director will review the proposed list of items and, if approved, submit the crew members' PPK lists through supervisory channels to the Associate Administrator for Human Exploration and Operations for approval. A signed copy of approval from the Associate Administrator for Human Exploration and Operations will be returned to the Director, NASA Johnson Space Center, for distribution.

§ 1214.605–1214.606 [Reserved]

§ 1214.607 Media and public inquiries.

Information on mementos flown on a particular mission will be routinely released by the Associate Administrator of the Office of Communications to the media and to the public upon their request, but only after they have been approved for flight.

§ 1214.608 [Reserved]

§ 1214.609 Loss or Theft.

(a) *Liability.* Neither NASA nor the U.S. Government will be liable for the loss or theft of, or damage to, items carried in OFKs or PPKs.

(b) *Report of loss or theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Office and the NASA Inspector General.

§ 1214.610 Violations.

Any items carried in violation of the requirements of this subpart shall become property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action, including being permanently prohibited from use of, or if an individual, from flying aboard a NASA mission.

Subpart 1214.7—The Authority of the NASA Commander

■ 7. Revise subpart 1214.7 to read as follows:

Sec.
1214.700 Scope.
1214.701 Definitions.
1214.702 Authority and responsibility of the NASA Commander.
1214.703 Chain of command.
1214.704 Violations.

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

Subpart 1214.7—The Authority of the NASA Commander

§ 1214.700 Scope.

This subpart establishes the authority of the NASA Commander of a NASA mission, excluding missions related to the ISS and activities licensed under Title 51 U.S.C. Chapter 509, to enforce order and discipline during a mission and to take whatever action in his/her judgment is reasonable and necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the spacecraft and payloads. During the final launch countdown, following crew ingress, the NASA Commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff, the NASA Commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

§ 1214.701 Definitions.

(a) The *flight crew* consists of the NASA Commander, astronaut crew members, and [any] other persons aboard the spacecraft.

(b) A *mission* is the period including the flight-phases from launch to landing on the surface of the Earth—a single round trip. (In the case of a forced landing, the NASA Commander's authority continues until a competent authority takes over the responsibility for the persons and property aboard).

(c) The *flight-phases* consist of launch, in orbit/transit, extraterrestrial mission, deorbit, entry, and landing, and post-landing back on Earth.

(d) A *payload* is a specific complement of instruments, space equipment, and support hardware/software carried into space to accomplish a scientific mission or discrete activity.

§ 1214.702 Authority and responsibility of the NASA Commander.

(a) During all flight phases, the NASA Commander shall have the absolute authority to take whatever action is in his/her discretion necessary to:

(1) Enhance order and discipline.

(2) Provide for the safety and well-being of all personnel on board.

(3) Provide for the protection of the spacecraft and payloads.

The NASA Commander shall have authority, throughout the mission, to use any reasonable and necessary means, including the use of physical force, to achieve this end.

(b) The authority of the NASA Commander extends to any and all personnel on board the spacecraft including Federal officers and employees and all other persons whether or not they are U.S. nationals.

(c) The authority of the NASA Commander extends to all spaceflight elements, payloads, and activities originating with or defined to be a part of the NASA mission.

(d) The NASA Commander may, when he/she deems such action to be necessary for the safety of the spacecraft and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

§ 1214.703 Chain of command.

(a) The NASA *Commander* is a trained NASA astronaut who has been designated to serve as commander on a NASA mission and who shall have the authority described in § 1214.702 of this part. Under normal flight conditions (other than emergencies or when otherwise designated) the NASA Commander is responsible to the Mission Flight Director.

(b) Before each flight, the other flight crewmembers will be designated in the order in which they will assume the authority of the NASA Commander under this subpart in the event that the NASA Commander is not able to carry out his/her duties.

(c) The determinations, if any, that a crewmember in the chain of command is not able to carry out his or her command duties and is, therefore, to be relieved of command, and that another crewmember in the chain of command is to succeed to the authority of the NASA Commander, will be made by the NASA Administrator or his/her designee.

§ 1214.704 Violations.

(a) All personnel on board the NASA mission are subject to the authority of the NASA Commander and shall conform to his/her orders and direction as authorized by this subpart.

(b) This subpart is a regulation within the meaning of 18 U.S.C. 799, and whoever willfully violates, attempts to violate, or conspires to violate any provision of this subpart or any order or direction issued under this subpart shall be subject to fines and imprisonment, as specified by law.

Subpart 1214.8—[Removed and Reserved]

■ 8. Remove and reserve subpart 1214.8, consisting sections 1214.800 through 1214.813.

* * * * *

Subpart 1214.17—[Removed and Reserved]

■ 9. Remove and reserve subpart 1214.17, consisting of sections 1214.1700 through 1214.1707.

Cheryl E. Parker,

Federal Register Liaison Officer.

[FR Doc. 2016–15431 Filed 6–30–16; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–10104; 34–78156; IA–4437; IC–32162; File No. S7–11–16]

RIN 3235–AL94

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting an interim final rule to implement the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990, as previously amended by the Debt Collection Improvement Act of 1996. This interim final rule adjusts for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.

DATES: *Effective Date:* This interim final rule is effective on August 1, 2016. *Comment Date:* Comments on the interim final rule should be received on or before August 15, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–11–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and

Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James A. Cappoli, Assistant General Counsel, Office of the General Counsel, at (202) 551–7923, or Stephen M. Ng, Senior Counsel, Office of the General Counsel, at (202) 551–7957.

I. Background

This interim final rule implements the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the "2015 Act"),[1] which amends the Federal Civil Penalties Inflation Adjustment Act of 1990 (the "Inflation Adjustment Act").[2] The Inflation Adjustment Act had previously been amended by the Debt Collection Improvement Act of 1996 ("DCIA")[3] to require that each federal agency adopt regulations at least once every four years that adjust for inflation the maximum amount of the civil monetary penalties ("CMPs") under the statutes administered by the agency. Pursuant to the requirements of the DCIA, the Commission has previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs under the statutes the Commission administers.[4]

The 2015 Act replaces the inflation adjustment mechanism prescribed in the DCIA and all previous inflation adjustments made pursuant to the DCIA with a new mechanism for calculating the inflation-adjusted amount of CMPs. Each agency must first adjust the maximum amount of CMPs[5] with an initial "catch-up" adjustment.[6] Each agency must then perform subsequent annual adjustments for inflation.[7] This interim final rule implements the initial "catch-up adjustment," which increases CMP amounts based on the percentage change between the Consumer Price Index for all Urban Consumers ("CPI–U") for the month of October in the year the civil penalty was established or previously adjusted by a statute or regulation other than the Inflation Adjustment Act, and the October 2015 CPI–U.[8] Annual inflation adjustments after this first catch-up adjustment will then be based on the percentage change between the October CPI–U preceding the date of the last adjustment made pursuant to the 2015 Act and the prior year's October CPI–U.[9] Thus, in January 2017, the Commission will again adjust the maximum amount of the CMPs it administers based on the percentage change from the 2015 October CPI–U to the 2016 October CPI–U.

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.[10] This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: The Securities Act of 1933; the Securities Exchange Act of 1934 (the "Exchange Act"); the Investment Company Act of 1940; and the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the Public Company Accounting Oversight Board (the "PCAOB") authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[11] The definition of a CMP in the 1990 Act encompasses such civil monetary penalties.[12]

Accordingly, we are revising 17 CFR 201.1001 and Table I to Subpart E, to establish revised amounts for each CMP authorized by the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act, and certain penalties under the Sarbanes-Oxley Act and removing § 201.1002 and Table II to Subpart E, § 201.1003 and Table III to Subpart E, § 201.1004 and Table IV to Subpart E, and § 201.1005 and Table V to Subpart E. The adjustments set forth in the amendment apply to all penalties imposed after the effective date of this interim final rule, including to penalties imposed for violations that occur before the effective date of the amendment.[13]

II. Summary of the Calculation

In order to complete the catch-up adjustment required by the 2015 Act, the Commission must first identify, for each penalty, the year and corresponding penalty amount when the maximum penalty amount was established (*i.e.*, as originally enacted by Congress), or last adjusted (*i.e.*, by Congress in statute, or by the agency through regulation), whichever is later, other than pursuant to the Inflation Adjustment Act.[14]

The Commission must then modify the maximum amount of CMPs based on the percentage by which the CPI–U for the month of October 2015, not seasonally adjusted, exceeds the CPI–U for the month of October for the calendar year when the penalty amount was established or last adjusted. OMB has provided a table to all agencies that lists multipliers that can be used to adjust the maximum penalty amount based on the year the penalty was established or last adjusted (the "CPI–U Multiplier").[15] After applying this multiplier, the Commission must round all penalty amounts to the nearest dollar. In accordance with the 2015 Act, however, the Commission shall not increase catch-up penalty amounts by more than 150 percent of the corresponding penalty amount in effect on November 2, 2015, including penalty adjustments made pursuant to the Inflation Adjustment Act prior to that date.[16]

---

[1] Public Law 114–74 Sec. 701, 129 Stat. 599–601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890–892 (1990), codified at 28 U.S.C. 2461 note.

[3] Public Law 104–134, Title III, § 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373, codified at 28 U.S.C. 2461 note.

[4] *See* 17 CFR part 201.1001 to 1005, and Tables I to V to Subpart E.

[5] The 2015 Act also applies to minimum penalty amounts and penalty ranges. *See* 28 U.S.C. 2461 note Sec. 5(a). All of the statutes administered by the Commission, however, only include maximum penalty amounts. Thus, in this interim final rule, we only refer to the effect of the 2015 Act on maximum penalty amounts.

[6] 28 U.S.C. 2461 note Sec. 4(b)(1); Office of Management and Budget, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (February 24, 2016) ("OMB Guidance") at 1, available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf*.

[7] 28 U.S.C. 2461 note Sec. 4(b)(2); OMB Guidance at 1.

[8] 28 U.S.C. 2461 note Sec. 5(b)(2); OMB Guidance at 3. The catch-up adjustment excludes prior adjustments under the Inflation Adjustment Act, which were capped at 10 percent and thus contributed to a decline in the real value of penalties. *See* OMB Guidance at 3. The 2015 Act is intended to remedy this decline. *See id.*

[9] 28 U.S.C. 2461 note Sec. 5; OMB Guidance at 4.

[10] 28 U.S.C. 2461 note Sec. 3(2). Thus the adjustments prescribed by the 2015 Act do not apply to penalties written as functions of violations or to civil penalties based on the defendant's gross pecuniary gain. OMB Guidance at 2.

[11] 15 U.S.C. 7215(c)(4)(D).

[12] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Securities Exchange Act of 1934. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties "enforced" by the Commission for purposes of the Act. *See Adjustments to Civil Monetary Penalty Amounts*, Release No. 33–8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

[13] 28 U.S.C. 2461 note Sec. 6; OMB Guidance at 3–4.

[14] 28 U.S.C. 2461 note Sec. 5(b)(2)(A); OMB Guidance at 3. References to the Inflation Adjustment Act here and below include the amendments made to that Act by the DCIA.

To explain the inflation adjustment calculation for CMP amounts under the 2015 Act, we provide the following example based on the CMP for certain insider trading violations by controlling persons in Exchange Act Section 21A(a)(3).[17]

Step 1: The Commission identifies the year that the CMP was established or last adjusted and the maximum CMP for that year. The maximum penalty amount for this provision was established in 1988 by the Insider Trading and Securities Fraud Enforcement Act of 1988.[18] When established, the maximum penalty amount for a violation of this provision was $1,000,000.

Step 2: The Commission multiplies the maximum penalty amount at the time the penalty amount was established or last adjusted by the CPI–U multiplier, representing the percentage change in the CPI–U from October in the year the penalty was established or last adjusted to October 2015, and rounds that number to the nearest dollar. Thus, we multiply $1,000,000 by the multiplier for 1988, 1.97869, to determine a new inflation-adjusted maximum CMP of $1,978,690.

Step 3: The Commission identifies the maximum CMP for the penalty provision as of November 2, 2015, including adjustments made pursuant to the Inflation Adjustment Act. For Section 21A(a)(3), the maximum CMP was previously adjusted in 2013 pursuant to the Inflation Adjustment Act to $1,525,000.[19]

Step 4: The Commission multiplies the November 2, 2015 maximum CMP by 2.5 to determine what a 150 percent increase from the current penalty would be. This is the maximum increase in the CMP that can be made pursuant to the catch-up adjustment. For Section 21A(a)(3), a 150 percent increase from the current penalty would be $3,812,500.

Step 5: The Commission compares the amount in Step 2 to the amount in Step 4. The lesser of these two amounts will be the new inflation-adjusted penalty amount. Because the adjusted penalty amount in Step 2, $1,978,690, is less than the maximum penalty allowed in Step 4, $3,812,500, the new inflation adjusted penalty amount for Section 21A(a)(3) is $1,978,690.[20]

III. The Commission Declines To Seek a Reduced Catch-Up Adjustment Determination

The 2015 Act allows agencies, after obtaining concurrence from OMB, to adjust penalties pursuant to a reduced catch-up adjustment determination.[21] In making such an adjustment, the agency must publish a notice of proposed rulemaking, provide an opportunity for comment, and determine in a final rule that a reduced catch-up adjustment determination is warranted because the otherwise required increase of a maximum penalty amount would have a negative economic impact, or because the social costs of the otherwise required adjustment would outweigh the benefits.[22]

We have concluded that such a reduced catch-up adjustment determination is not necessary and instead have adopted the adjustments prescribed by the 2015 Act. The increases envisioned by the 2015 Act ensure that the Commission's CMPs maintain their deterrent and remedial effect and prevent these desired effects from being diminished by inflation. We do not believe they will have a negative economic impact.[23] Further, while the adjustments required by the 2015 Act do raise the maximum amounts of the Commission's CMPs, the percentage increases in the maximum amounts are generally consistent with previous inflation adjustments and the Commission and the courts always maintain the discretion to impose a lower penalty amount if the new maximum amount would be unjust or inappropriate in a particular case.

IV. Request for Comment

We request and encourage interested persons to submit comments on any aspect of this interim final rule, other matters that might have an impact on the rule, and any suggestions for additional changes. In particular, we invite comments on whether, contrary to the conclusion set forth above, the Commission should seek a reduced catch-up adjustment determination. Comments on this topic should address the statutory bases for requesting a reduced catch-up adjustment determination: (1) Whether the otherwise required increase of the maximum amount of the CMPs administered by the Commission would have a negative economic impact, or (2) whether the social costs of adopting the otherwise required increase of the maximum amount of these CMPs would outweigh the benefits. With respect to any such comments, they are of greatest assistance if accompanied by supporting data and analysis of the issues listed above.

V. Procedural and Other Matters

Given that the Commission is not seeking a reduced catch-up adjustment determination, the Commission is required by the 2015 Act to adjust the CMPs within its jurisdiction for inflation using a statutorily prescribed formula and the 2015 Act mandates that the initial catch-up adjustment be made through an interim final rule effective not later than August 1, 2016.[24] In light of this Congressional mandate, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the

---

[15] 28 U.S.C. 2461 note Sec. 5(b)(2)(B); OMB Guidance at 3, Table A.

[16] 28 U.S.C. 2461 note Sec. 5(b)(2)(C); OMB Guidance at 3. Because the 150 percent limitation is on the amount of the increase, the adjusted penalty will be up to 250 percent above the amount in effect on November 2, 2015.

[17] 15 U.S.C. 78u–1(a)(3).

[18] Public Law 100–704, Sec. 3(a)(2), 102 Stat. 4677–4679 (1988). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized the Commission to impose civil penalties in cease-and-desist proceedings. *See* 15 U.S.C. 77h–1(g), 15 U.S.C. 78u–2(b), 15 U.S.C. 80a–9(d)(1)(B), 15 U.S.C. 80b–3(i)(1)(B). For the Securities Act, Congress provided this authority in a new section of that Act, whereas for the Exchange Act, the Investment Company Act, and the Investment Advisers Act, Congress cross-referenced pre-existing penalty amounts for administrative proceedings that were established in 1990. Therefore, for the purposes of applying the 2015 Act, the amounts of the penalties for cease-and-desist proceedings under the Securities Act were established in 2010 and the amounts of the penalties for cease-and-desist proceedings under the Exchange Act, the Investment Company Act, and the Investment Advisers Act were established in 1990.

[19] 17 CFR 201.1005, Table V.

[20] Almost all of the new inflation-adjusted penalty amounts listed below were obtained by multiplying the penalty amount in the year the penalty was established or last adjusted by the CPI–U multiplier. The only exception is the civil penalty for violations of Exchange Act Section 32(b), 15 U.S.C. 78ff(b), in which the inflation-adjusted penalty amount would have been greater than the maximum 150 percent increase allowed by the 2015 Act.

[21] OMB has stated its expectation that it will only rarely concur with a proposal to reduce penalty amounts below that required by the 2015 Act. *See* OMB Guidance at 3.

[22] 28 U.S.C. 2461 note Sec. 4(c); OMB Guidance at 3.

[23] *See infra* Section VI for the Commission's Economic Analysis.

[24] 28 U.S.C. 2461 note Sec. 4(b)(1).

Administrative Procedure Act ("APA").[25] Under the Regulatory Flexibility Act ("RFA"), a regulatory flexibility analysis is required only when an agency must publish a general notice of proposed rulemaking.[26] As noted above, public notice and comment is not required for this interim final rule; therefore, a regulatory flexibility analysis is not required. Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[27]

VI. Economic Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The baseline for this analysis is the statutory framework described above in Section I. In enacting the 2015 Act, Congress directed the Commission to adjust CMPs in accordance with inflation. The Commission notes that this regulation has no impact on disclosure or compliance costs. The Commission further notes that the CMPs ordered in SEC proceedings and PCAOB disciplinary proceedings in fiscal year 2015 totaled approximately $1,176 million. The inflationary adjustment required by the 2015 Act results in the increase of the maximum amount of the CMPs administered by the Commission of approximately 7.67% to 11.3%. Assuming that the Commission is successful in obtaining civil monetary penalties in fiscal years subsequent to the enactment of this regulation in similar proportion to that obtained in fiscal year 2015, the inflationary adjustment pursuant to the new regulation would result in an increase in the civil monetary penalties ordered of approximately $90.1 million to $132.9 million.

This potential increase, however, overstates the effect of the rule. First, these figures represent the amount of penalties that could be potentially ordered, whereas the amount of penalties collected in any given year—the amount of penalties that would affect the economy—can be lower than the ordered amount. Second, penalties imposed in insider trading cases brought in district court are based on the profit gained or loss avoided as a result of the violation rather than by reference to a statutory dollar amount that is affected by this regulation.[28] The average annual amount of penalties obtained in insider trading cases from FY 2010 through FY 2015 is $108.2 million. Third, in many cases where the Commission has obtained large civil monetary penalties, such penalties were calculated on the basis of the defendant's gross pecuniary gain rather than the maximum penalty dollar amount set by statute that will be adjusted by the proposed rule.[29] In addition, the intent of the new regulation is merely to keep pace with changes in the economy, not to impose new costs. Therefore, for the instances in which CMPs affected by this rulemaking are imposed, the Commission does not believe that adjusting civil monetary penalties pursuant to the 2015 Act will significantly affect the amount of penalties it obtains beyond that necessary to keep pace with inflation.

The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation. The costs of implementing this rule should be negligible because the only change from the current, baseline situation is determining potential penalties using a new maximum dollar amount.

VII. Statutory Basis

The Commission is adopting these revisions to 17 CFR part 201, subpart E pursuant to the directives and authority of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 129 Stat. 599–601 (Nov. 2, 2015).

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Penalties, Securities.

Text of Amendment

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended by revising Subpart E as set forth below:

PART 201—RULES OF PRACTICE

Subpart E—Adjustment of Civil Monetary Penalties

Sec.
201.1001 Adjustment of civil monetary penalties—2016.
Table I to Subpart E of Part 201— Civil monetary penalty inflation adjustments.

Authority: 28 U.S.C. 2461 note.

Subpart E—Adjustment of Civil Monetary Penalties

§ 201.1001 Adjustment of civil monetary penalties—2016.

As required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 are adjusted for inflation in accordance with Table I to this subpart E. The adjustments set forth in Table I to this subpart E apply to all penalties imposed after August 1, 2016, including to penalties imposed for violations that occur before August 1, 2016.

---

[24] 28 U.S.C. 2461 note Sec. 4(b)(1).

[25] 5 U.S.C. 553(b)(3)(B). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines).

[26] 5 U.S.C. 603.

[27] 44 U.S.C. 3501 *et. seq.*

[28] 15 U.S.C. 78u–1(a)(2).

TABLE I TO SUBPART E OF PART 201—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	Year penalty amount was established or last adjusted *	Maximum penalty amount when established or last adjusted	Maximum penalty amount in effect on November 2, 2015	New adjusted maximum penalty amount effective August 1, 2016
Securities and Exchange Commission:					
15 U.S.C. 77h–1(g)	For natural person	2010	$7,500	$7,500	$8,156
	For any other person	2010	75,000	80,000	81,559
	For natural person/fraud	2010	75,000	80,000	81,559
	For any other person/fraud	2010	375,000	400,000	407,794
	For natural person/substantial losses or risk of losses to others or gains to self.	2010	150,000	160,000	163,118
	For any other person/substantial losses or risk of losses to others or gain to self.	2010	725,000	775,000	788,401
15 U.S.C. 77t(d)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others.	1990	500,000	775,000	890,780
15 U.S.C. 78ff(b)	Exchange Act/failure to file information documents, reports.	1936	100	210	525
15 U.S.C. 78ff(c)(1)(B)	Foreign Corrupt Practices—any issuer	1988	10,000	16,000	19,787
15 U.S.C. 78ff(c)(2)(B)	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	1988	10,000	16,000	19,787
15 U.S.C. 78u–1(a)(3)	Insider Trading—controlling person	1988	1,000,000	1,525,000	1,978,690
15 U.S.C. 78u–2	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others or gains to self.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others or gain to self.	1990	500,000	775,000	890,780
15 U.S.C. 78u(d)(3)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others.	1990	500,000	775,000	890,780
15 U.S.C. 80a–9(d)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others or gains to self.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others or gain to self.	1990	500,000	775,000	890,780
15 U.S.C. 80a–41(e)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others.	1990	500,000	775,000	890,780
15 U.S.C. 80b–3(i)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others or gains to self.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others or gain to self.	1990	500,000	775,000	890,780
15 U.S.C. 80b–9(e)	For natural person	1990	5,000	7,500	8,908
	For any other person	1990	50,000	80,000	89,078
	For natural person/fraud	1990	50,000	80,000	89,078

TABLE I TO SUBPART E OF PART 201—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was established or last adjusted *	Maximum penalty amount when established or last adjusted	Maximum penalty amount in effect on November 2, 2015	New adjusted maximum penalty amount effective August 1, 2016
	For any other person/fraud	1990	250,000	400,000	445,390
	For natural person/substantial losses or risk of losses to others.	1990	100,000	160,000	178,156
	For any other person/substantial losses or risk of losses to others.	1990	500,000	775,000	890,780
15 U.S.C. 7215(c)(4)(D)(i)	For natural person	2002	100,000	130,000	131,185
	For any other person	2002	2,000,000	2,525,000	2,623,700
15 U.S.C. 7215(c)(4)(D)(ii)	For natural person	2002	750,000	950,000	983,888
	For any other person	2002	15,000,000	18,925,000	19,677,750

* Adjustments include any revisions by Congress in statute, or by the agency through regulation, other than pursuant to the Inflation Adjustment Act.

Dated: June 27, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15541 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10095; 34–78044; 39–2510; IC–32145]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made primarily to support the submission of asset-backed securities (ABS) related form types by registrants whose Standard Industrial Classification (SIC) code is not 6189; terminate support for the US–GAAP–2014, EXCH–2014, COUNTRY–2012, and CURRENCY–2012 taxonomies; and allow certain filers to use Inline XBRL in their Related Official Filing, provided that the structured information satisfies all other submission requirements. The EDGAR system is scheduled to be upgraded to support these functionalities on June 13, 2016.

DATES: Effective July 1, 2016. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of July 1, 2016.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporate Finance, for questions concerning Asset-Backed Securities related submission form types, contact Vik Sheth at (202) 551–3818; and in the Division of Economic and Risk Analysis, for questions concerning unsupported taxonomies and Inline XBRL, contact Walter Hamscher at (202) 551–5397.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 37 (June 2016). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 16.2 on June 13, 2016 and will introduce the following changes:

EDGAR will be updated to allow registrants whose Standard Industrial Classification (SIC) code is not 6189 (asset-backed securities) to file the following asset-backed securities related submission form types:

- SF–1, SF–1/A, SF–3, SF–3/A, SF–3MEF, 424H, 424H/A, ABS–EE, ABS–EE/A, 8–K, 8–K/A, 10–D, and 10–D/A.

The following fields will now be required for all filers submitting form types 10–D and 10–D/A and providing Item 6 or attaching an EX–36 on submission form types 8–K and 8–K/A, irrespective of the filer's SIC code:

- Sponsor CIK
- Depositor CIK
- ABS Asset Class

EDGAR will no longer provide support for the US–GAAP–2014, EXCH–2014, COUNTRY–2012, and CURRENCY–2012 taxonomies. Please see *http://www.sec.gov/info/edgar/edgartaxonomies.shtml* for a complete listing of supported standard taxonomies.

Pursuant to a Commission exemptive order issued on June 13, 2016, certain filers will be able to use Inline XBRL in their Related Official Filing for a limited period of time until March of the year 2020, provided that the structured information satisfies all other submission requirements and conditions specified in the order are met. Inline XBRL is a file format permitting both HTML and Interactive Data tags. Instructions for formatting

---

[29] For example, 15 U.S.C. 77t(d)(2)(A), after adjusting for inflation as required by the 2015 Act, provides that the amount of the penalty shall not exceed the greater of $8,908 for a natural person or $89,708 for any other person, or the gross amount of pecuniary gain to such defendant as a result of the violation.

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993.

[3] *See* Release No. 33–10071 in which we implemented EDGAR Release 16.1. For additional history of Filer Manual rules, please see the cites therein.

and attaching Inline XBRL documents to EDGAR submissions are described in a new subsection 5.2.5 of EDGAR Filer Manual, Volume II.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is July 1, 2016. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 16.2 is scheduled to become available on June 13, 2016. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with these system upgrades.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information," Version 24 (December 2015). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 37 (June 2016). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N–SAR Supplement," Version 5 (September 2015). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

By the Commission.

Dated: June 13, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15510 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2006–0140]

RIN 0960–AF35

Revised Medical Criteria for Evaluating Neurological Disorders

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising the criteria in the Listing of Impairments (listings) that we use to evaluate disability claims involving neurological disorders in adults and children under titles II and XVI of the Social Security Act (Act). These revisions reflect our program experience; advances in medical knowledge, treatment, and methods of evaluating neurological disorders; comments we received from medical experts and the public at an outreach policy conference; responses to an advance notice of proposed rulemaking (ANPRM); and public comments we received in response to a Notice of Proposed Rulemaking (NPRM) and a **Federal Register** notice that reopened the NPRM comment period.

DATES: This rule is effective September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are making final the rule for evaluating neurological disorders that we proposed in an NPRM published in the **Federal Register** on February 25, 2014 (79 FR 10636). In the preamble to the NPRM, we discussed the revisions to our current rule for the neurological body system and our reasons for proposing those revisions. To the extent that we are adopting the proposed rule as published, we are not repeating that information here; interested readers may refer to the NPRM preamble. We incorporated into the final rule the portions of Social Security Ruling (SSR) 87–6, "Titles II and XVI: The Role of Prescribed Treatment in the Evaluation of Epilepsy" that continue to be relevant to the treatment of epilepsy. As part of the publication of this final rule, we are rescinding SSR 87–6. We also respond to public comments on the NPRM and explain what changes we are making based on those comments in the "Public Comments on the NPRM" section of the preamble.

---

[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

Why are we revising the listings for evaluating neurological disorders?

We are comprehensively revising the listings for evaluating neurological disorders to update the medical criteria, provide additional methods of evaluating neurological disorders, provide more information on how we evaluate neurological disorders, make other changes that reflect our program experience, and address adjudicator questions. We last comprehensively revised the listings for the neurological disorders body system in a final rule published on December 6, 1985.[1] We have made only a few changes since then to meet program purposes.[2]

Summary of Public Comments on the NPRM

In the NPRM, we provided the public with a 60-day comment period that ended on April 28, 2014. We reopened the comment period for 30 days on May 1, 2014 (70 FR 24634). The last of the two comment periods closed on June 2, 2014. We received and posted 2,103 public comments during the initial period for public comments on the NPRM, and received and posted an additional 921 when we extended the NPRM comment period. We also received and posted 55 comments when we initially made the public aware of our efforts to update this rule, when we published the ANPRM. The comments came from members of the public, medical professionals, national medical organizations, advocacy groups, disability examiners and other adjudicators, and a national association representing disability examiners in the State agencies that make disability determinations for us.

The majority of the comments was repetitive and expressed support of or agreement with identical recommendations submitted by a few national organizations. For example, we received just over 1,100 comments that repeated, or were in support of recommendations submitted by a few Huntington's disease organizations; approximately 800 comments that repeated, or were in support of recommendations submitted by various headache organizations; and approximately 350 repeat comments that were in support of recommendations from various Parkinson's disease organizations.

In general, the recommendations and concerns raised by the majority of public commenters were very similar or identical. We received several comments suggesting that we create separate listings for various neurological disorders that we address in one comment below. Some commenters noted provisions with which they agreed and did not make suggestions for changes in those provisions. For example, over 300 comments were testimonials from commenters sharing their personal experience with various neurological disorders. Approximately 300 comments were outside the scope of the neurological NPRM, several of those were relevant to other body system disorders; we shared those comments with the appropriate body systems policy teams for consideration. We did not summarize or respond to comments that were in agreement with, or outside the scope of the neurological NPRM. We addressed repetitive comments that raised identical issues as one comment.

We carefully considered all of the relevant comments we received and we responded to all of the significant issues raised by the commenters that were within the scope of this rule. We provide our reasons for adopting or not adopting the comment recommendations in our responses below.

General Comments

Comment: Several commenters suggested that we create separate listings for various neurological disorders, such as migraine, cluster headaches and other severe headache disorders, fetal alcohol syndrome, cervical dystonias, atypical facial pain, and trigeminal neuralgia. One commenter expressed opposition to creating a separate listing for migraine headaches because the symptoms are too subjective. Other commenters suggested adding several neurological disorders to specific listings.

Response: We did not adopt these comments. While we do not have listings for every neurological condition, we are able to evaluate unlisted neurological disorders in several ways under our sequential evaluation process. We will determine whether your impairment medically equals a listing. If your impairment does not medically equal the criteria of a listing, you may or may not have the residual functional capacity to perform your past relevant work or adjust to other work that exists in significant numbers in the national economy, which we determine at the fourth and, if necessary, the fifth steps of the sequential evaluation process. As we work on the next iteration of revisions to the neurological rule, we will consider the suggestions for adding new listings and will consider comments expressing opposition to adding certain new listings.

Comment: We received a number of comments related to how we evaluate migraines and other chronic headache disorders. As we mentioned in the previous comment, several commenters asked that we recognize migraines as a disabling impairment and suggested we create a specific listing. Other commenters suggested listing criteria for us to consider. One commenter raised concerns about evaluating chronic headache disorders because of the subjective nature of the disorders.

Response: We acknowledge the commenters' concerns. We realize it is appropriate to provide impairment-specific guidance on how we evaluate migraines and other chronic headache disorders. We will address these concerns in training to ensure all adjudicators know how to establish migraine and other chronic headache disorders as medically determinable impairments (MDIs). Once we establish the existence of an MDI(s), we follow the remaining steps in the sequential evaluation process (See §§ 404.1520, 416.920, and 416.924). As noted in the response above to the comments about creating additional listings, we are able to evaluate unlisted neurological disorders in several ways under our sequential evaluation process.

Comment: We received several comments expressing concern that the proposed functional criteria for determining disability in individuals with Huntington's disease (HD) and

---

[1] 50 FR 50068.

[2] On December 12, 1990, we raised the IQ limit in 11.07A, 111.02B1, 111.07B1, and 111.08B2 from 69 to 70 (55 FR 51204). We published a final rule adding section 11.00F for traumatic brain injury on August 21, 2000 (65 FR 50746); made technical revisions to most of the body systems on April 24, 2002 (67 FR 20018), which included some changes to the neurological body system; revised listing 11.10 for Amyotrophic lateral sclerosis (ALS) on August 82, 2003 (68 FR 51689); moved the listings for malignant brain tumors to the body system for malignant neoplastic diseases on November 15, 2004 (69 FR 67018); and made a technical correction in listing 111.09 on March 24, 2011 (76 FR 16531).

Parkinson's disease still rely on the presence of physical limitations and do not adequately address the common non-physical manifestations of these diseases. The commenters suggested we include the mental criteria from the mental body system in the neurological disorders body system to evaluate the mental aspects of neurological disorders in the absence of physical limitations commonly seen in HD and in Parkinson's disease. They indicated the proposed criteria should include criteria specific to mental functioning in order to address the full range of symptoms often experienced by people who suffer with HD and Parkinson's disease. The commenters also suggested that the proposed introductory text sections where we discuss HD and Parkinson's disease direct adjudicators beyond listing 12.02 to expand to the entire mental body system, as appropriate, when they need to evaluate mental symptoms associated with neurological disorders.

Response: We partially adopted this comment. For program purposes, we consider all impairments under all applicable body systems as part of our disability evaluation. In the listings, we describe each of the major body systems impairments we consider severe enough to be disabling, and we list requirements that demonstrate a level of severity and duration consistent with the definition of disability set by Congress under the Act. We evaluate the person's impairment(s) under the most appropriate body system(s). We recognize that neurological disorders may co-occur with impairments we evaluate in other body systems; however, we intend the listings in this final rule to address only neurological disorders and the complications from those disorders. When only mental aspects of neurological disorders are present in the absence of physical limitations commonly seen in HD and Parkinson's disease, we evaluate those limitations under the appropriate mental disorders body system listings. However, when mental aspects of neurological disorders are present and co-occur with the physical limitations of these disorders, we evaluate limitations in physical and mental functioning under the neurological listings. In response to this and similar comments, we provided additional guidance in the introductory text explaining how we evaluate mental disorders under these listings.

We modified our functional criteria and severity rating scale to address the common mental aspects of neurological disorders. Our intent in the new functional criteria for adults is to provide a way to evaluate impairments and determine disability appropriately, even when those impairments are difficult to evaluate based on medical criteria alone. With functional criteria, we can evaluate the functional impact associated with any neurological impairment in broad areas of physical and mental functioning. The four areas of mental functioning are understanding, remembering, or applying information; interacting with others; concentrating, persisting, or maintaining pace; and adapting or managing oneself. For example, a person with a neurological disorder may demonstrate a limitation in the ability to walk (as addressed under the physical functioning criterion). He or she may also have a mental impairment resulting from the neurological disorder, which is demonstrated by a limitation in the ability to concentrate.

Comment: A commenter stated that the definition of social functioning in proposed section 11.00G3 should not focus solely on limitations caused by physical ailments. The commenter suggested that the social functioning criteria should include interpersonal interactions, as well as non-physical symptoms such as irritability, aggression, and perseveration.

Response: We adopted this comment. We mentioned in the previous comment we modified our functional criteria to focus on the common mental aspects of neurological disorders. We also changed the criterion from "social functioning" to "interacting with others" to be consistent with the way mental functions are described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.*[3]

Comment: Several commenters noted that proposed section 11.00C states, "Medical research shows that these neurological conditions may improve after a period of treatment." The commenters pointed out this statement is false and we should correct it because Parkinson's disease never improves.

Response: We adopted this comment. It was not our intent to indicate in listing 11.06 that Parkinson's disease itself may improve with treatment, as the disease is progressive. We removed the statement.

Comment: Several commenters asked that we revise proposed section 11.00K to clarify that motor and non-motor symptoms can be equally disabling in Parkinsonian syndromes, and to reflect that symptoms can fluctuate significantly from hour to hour and minute to minute, often making job performance in a professional environment very difficult.

Response: We partially adopted this comment. We agree that non-motor symptoms can be as disabling as motor symptoms in Parkinsonian syndromes. However, limitations resulting from non-motor symptoms are highly variable and we evaluate them on a case-by-case basis. The new functional criteria enable adjudicators to evaluate non-motor symptoms associated with Parkinsonian syndromes under listing 11.06B. We mention that neurological disorders may manifest in a combination of limitations in physical and mental functioning in the adult section, 11.00G. We will also provide guidance in training to adjudicators about the variable manifestations of neurological disorders, such as Parkinsonian syndrome.

Comment: One commenter expressed disappointment that the revised epilepsy listing does not include any discussion of how to "deal with claimants who suffer from a mix of tonic-clonic and dyscognitive seizures." The commenter stated that "although the revised listing explicitly acknowledges that individuals may suffer from a mix of tonic-clonic and dyscognitive seizures,[4] there is no guidance as to how to evaluate a claimant experiencing both types of seizures."

Response: We do not agree with the commenter. In section 11.00H4c, we provide guidance on how to count dyscognitive seizures that progress into generalized tonic-clonic seizures. However, we do not believe that it is possible to address every permutation of the dyscognitive and tonic-clonic mixed seizure types. The signs and symptoms of such seizure types will vary from person to person. Adjudicators evaluate limitations caused by mixed seizures on a case-by-case basis.

Comment: One commenter was pleased that we included a more detailed explanation for the term "marked" in 11.00G2 but was concerned that this definition relied on the term "seriously," as in "interfere seriously" and "seriously limit," which we did not define. This commenter believed that not defining the term "seriously," while repeatedly relying on it to define the term "marked," creates a significant ambiguity in the listings. The commenter was concerned that adjudicators will apply the term "marked" inconsistently unless we include a definition for the term "seriously."

---

[3] American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition,* Arlington, VA, American Psychiatric Association, 2013.

[4] See NPRM 11.00H(4)(c).

Response: We partially adopted this comment. In the modified final section 11.00D of the introductory text, we include criteria for how to establish disorganization of motor function, descriptions for how to evaluate those criteria, and a definition of an extreme limitation in disorganization of motor function. If we do not find that a person is disabled on the basis of disorganization of motor function alone, as explained in 11.00D, we will find that the person's neurological disorder is incompatible with the ability to do any gainful activity if it results in marked limitation in physical functioning and marked limitation in one of four areas of mental functioning. In the modified final section 11.00G of the introductory text, we provide definitions for marked limitations drawn from our currently used definitions in section 7.00G4 of the listing of impairments for hematological disorders and section 1.00B of the listing of impairments for musculoskeletal disorders. We also provide descriptions of the considerations for physical and mental functioning in 11.00G2 and 11.00G3.

Comment: One commenter suggested that we not remove the intelligence quotient (IQ) requirement from the neurological listings, as the commenter believes it is the best indicator of mental capability.

Response: We did not adopt this comment. As we explained in the preamble to the NPRM, we are removing the criterion of an IQ score from our neurological listings because advances in medical knowledge of cerebral palsy (for adults and children), epilepsy (for children), spinal cord insults (for children), and our program experience indicate that an IQ score does not provide the best measure of limitations in cognitive functioning associated with these disorders. Therefore, it may not indicate listing-level severity under the neurological listings and would be more appropriately used to evaluate mental disorders under our mental disorders body system.

Comment: One commenter expressed that scales rating function into categories such as "mild," "moderate," and "severe," are clearly subjective on the part of the rater and their meaningfulness is questionable.

Response: The word "severe" in the disability program separates step 2 from step 3 in the sequential evaluation process that we use to evaluate a person's physical or mental impairment or combination of impairments. If we find at step 2 that a person does not have a "severe" medically determinable impairment (MDI) or combination of MDIs that meet the duration requirement, we will find the person is not disabled. If we find at step 2 that the person has a "severe" MDI or combination of MDIs, we will continue evaluating the impairment(s) at step 3 of the sequential evaluation process. (See §§ 404.1520(a), 416.920(a) and 416.924(a).) With respect to the terms, "mild" and "moderate," we have used those terms in a five-point rating scale in the mental disorders body system (consisting of none, mild, moderate, marked, and extreme) since 1985 (§§ 404.1520a and 416.920a). We have also used the terms "marked" and "extreme" limitation in childhood functional equivalence policy (§§ 416.926a). Such scales and ratings continue to be standard medical practice, and continue to be effective for evaluating degrees of impairment-related limitation(s). Moreover, in the modified final introductory text (11.00D2, 11.00G2, and 11.02D2), we include guidance for our adjudicators on the meaning and use of these terms.

Comment: One commenter said a significant feature of the proposed new criteria is that we will presume individuals (with many different neurological disorders) are disabled if they are unable to stand from a sitting position and are not presently working. The commenter noted that it appears obvious from casual observation that many individuals successfully work in a wide variety of different sedentary positions, such as Wal-Mart greeter, office worker, and physician. Because significant numbers of these individuals work on a regular basis in the national economy, it is quite easy for a lay observer to think it inappropriate for the Social Security Administration to presume that all individuals unable to stand are also unable to work.

Response: We did not adopt this comment. As we explain in 11.00D2a, an inability to stand up from a seated position means that, once seated, you are unable to stand and maintain an upright position without the risk of falling unless you have the assistance of another person or the use of an assistive device, such as a walker, two crutches, or two canes. The severity of such a limitation is set at a standard much higher than that applicable to a person who is able to do sedentary work; it thereby constitutes an inability to do any gainful activity in the national economy.

Comment: One commenter suggested that when referring to spinal cord insults we use the term "spinal cord disorders" instead of "spinal cord insults."

Response: We agree with the commenter and adopted this comment.

Comment: Some commenters asked how we would evaluate adherence to prescribed treatment for epilepsy patients when we removed the requirement for serum drug levels, particularly for patients prescribed newer antiepileptic drugs.

Response: We describe how we consider adherence to prescribed treatment under 11.00C. We consider whether you have taken medications or followed other treatment procedures as prescribed by a physician for three consecutive months. We no longer require serum drug levels. When we last revised the listings in 1985, blood drug levels were strong indicators for prescribed treatment compliance because therapeutic ranges had been established for antiepileptic drugs (AEDs) and the ranges were often noted on laboratory results. Many newer AEDs do not have established therapeutic levels, which makes lab results difficult for our adjudicators to interpret. We removed the requirement for obtaining blood drug levels to address this adjudicative issue and to simplify evaluation of seizures that satisfy the listing criteria. However, we will continue to consider blood drug levels available in the evidence in the context of all evidence in the case record.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.[5]

When will we begin to use this final rule?

We will begin to use this final rule on its effective date. We will continue to use the current listings until the date the final rule becomes effective. We will apply the final rule to new applications filed on or after the effective date of the final rule and to claims that are pending on or after the effective date.[6]

---

[5] 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1).

[6] This means that we will use the final rule on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review the Commissioner's final decisions using the rule that were in effect at the time we issued the decisions. If a court reverses the Commissioner's final decision and remands a case for further administrative proceedings after the effective date of the final rule, we will apply the final rule to the entire period at issue in the decision we make after the court's remand.

How long will this final rule be effective?

This final rule will remain in effect for 5 years after the date it becomes effective, unless we extend it, or revise and issue it again.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security— Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404, subpart P as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 as follows:
■ a. Revise item 12 of the introductory text before part A;
■ b. Amend part A by revising the body system name for section 11.00 in the table of contents;
■ c. In section 1.00 of part A, revise the introduction to paragraph K;
■ d. Revise section 11.00 of part A;
■ e. In section 12.00 of part A, revise paragraph D10, listing 12.01, listing 12.09E, and listing 12.09I;
■ f. Amend part B by revising the body system name for section 111.00 in the table of contents;
■ g. In section 101.00 of part B, revise the last sentence of paragraph B1;
■ h. In section 101.00 of part B, revise the last sentence of paragraph B1 and paragraph K; and
■ i. Revise section 111.00 of part B to read as follows:

APPENDIX 1 TO SUBPART P OF PART 404—LISTING OF IMPAIRMENTS

* * * * *

12. Neurological Disorders (11.00 and 111.00): September 29, 2021.

* * * * *

Part A

* * * * *

11.00 Neurological Disorders

* * * * *

1.00 Musculoskeletal System

* * * * *

K. *Disorders of the spine,* listed in 1.04, result in limitations because of distortion of the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissue may result from a herniated nucleus pulposus, spinal stenosis, arachnoiditis, or other miscellaneous conditions.

* * * * *

11.00 NEUROLOGICAL DISORDERS

A. *Which neurological disorders do we evaluate under these listings?* We evaluate epilepsy, amyotrophic lateral sclerosis, coma or persistent vegetative state (PVS), and neurological disorders that cause disorganization of motor function, bulbar and neuromuscular dysfunction, communication impairment, or a combination of limitations in physical and mental functioning. We evaluate neurological disorders that may manifest in a combination of limitations in physical and mental functioning. For example, if you have a neurological disorder that causes mental limitations, such as Huntington's disease or early-onset Alzheimer's disease, which may limit executive functioning (*e.g.,* regulating attention, planning, inhibiting responses, decision-making), we evaluate your limitations using the functional criteria under these listings (see 11.00G). Under this body system, we evaluate the limitations resulting from the impact of the neurological disease process itself. If your neurological disorder results in only mental impairment or if you have a co-occurring mental condition that is not caused by your neurological disorder (for example, dementia), we will evaluate your mental impairment under the mental disorders body system, 12.00.

B. *What evidence do we need to document your neurological disorder?*

1. We need both medical and non-medical evidence (signs, symptoms, and laboratory findings) to assess the effects of your neurological disorder. Medical evidence should include your medical history, examination findings, relevant laboratory tests, and the results of imaging. Imaging refers to medical imaging techniques, such as x-ray, computerized tomography (CT), magnetic resonance imaging (MRI), and electroencephalography (EEG). The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder. In addition, the medical evidence may include descriptions of any prescribed treatment and your response to it. We consider non-medical evidence such as statements you or others make about your impairments, your restrictions, your daily activities, or your efforts to work.

2. We will make every reasonable effort to obtain the results of your laboratory and imaging evidence. When the results of any of these tests are part of the existing evidence in your case record, we will evaluate the test results and all other relevant evidence. We will not purchase imaging, or other diagnostic tests, or laboratory tests that are complex, may involve significant risk, or that are invasive. We will not routinely purchase tests that are expensive or not readily available.

C. *How do we consider adherence to prescribed treatment in neurological disorders?* In 11.02 (Epilepsy), 11.06 (Parkinsonian syndrome), and 11.12 (Myasthenia gravis), we require that limitations from these neurological disorders exist despite adherence to prescribed treatment. "Despite adherence to prescribed treatment" means that you have taken medication(s) or followed other treatment procedures for your neurological disorder(s) as prescribed by a physician for three consecutive months but your impairment continues to meet the other listing requirements despite this treatment. You may receive your treatment at a health care facility that you visit regularly, even if you do not see the same physician on each visit.

D. *What do we mean by disorganization of motor function?*

1. *Disorganization of motor function* means interference, due to your neurological disorder, with movement of two extremities; *i.e.,* the lower extremities, or upper extremities (including fingers, wrists, hands, arms, and shoulders). By two extremities we mean both lower extremities, or both upper extremities, or one upper extremity and one lower extremity. All listings in this body system, except for 11.02 (Epilepsy), 11.10 (Amyotrophic lateral sclerosis), and 11.20 (Coma and persistent vegetative state), include criteria for disorganization of motor function that results in an extreme limitation in your ability to:

a. Stand up from a seated position; or

b. Balance while standing or walking; or

c. Use the upper extremities (including fingers, wrists, hands, arms, and shoulders).

2. *Extreme limitation* means the inability to stand up from a seated position, maintain balance in a standing position and while walking, or use your upper extremities to independently initiate, sustain, and complete work-related activities. The assessment of motor function depends on the degree of interference with standing up; balancing while standing or walking; or using the upper extremities (including fingers, hands, arms, and shoulders).

a. Inability to stand up from a seated position means that once seated you are unable to stand and maintain an upright position without the assistance of another person or the use of an assistive device, such as a walker, two crutches, or two canes.

b. Inability to maintain balance in a standing position means that you are unable to maintain an upright position while standing or walking without the assistance of another person or an assistive device, such as a walker, two crutches, or two canes.

c. Inability to use your upper extremities means that you have a loss of function of both upper extremities (including fingers, wrists, hands, arms, and shoulders) that very seriously limits your ability to independently initiate, sustain, and complete work-related activities involving fine and gross motor movements. Inability to perform fine and gross motor movements could include not being able to pinch, manipulate, and use your fingers; or not being able to use your hands, arms, and shoulders to perform gross motor movements, such as handling, gripping, grasping, holding, turning, and reaching; or not being able to engage in exertional movements such a lifting, carrying, pushing, and pulling.

E. *How do we evaluate communication impairments under these listings?* We must have a description of a recent comprehensive evaluation including all areas of communication, performed by an acceptable medical source, to document a communication impairment associated with a neurological disorder. A communication impairment may occur when a medically determinable neurological impairment results in dysfunction in the parts of the brain responsible for speech and language. We evaluate communication impairments associated with neurological disorders under 11.04A, 11.07C, or 11.11B. We evaluate communication impairments due to non-neurological disorders under 2.09.

1. Under 11.04A, we need evidence documenting that your central nervous system vascular accident or insult (CVA) and sensory or motor aphasia have resulted in ineffective speech or communication. *Ineffective speech or communication* means there is an extreme limitation in your ability to understand or convey your message in simple spoken language resulting in your inability to demonstrate basic communication skills, such as following one-step commands or telling someone about your basic personal needs without assistance.

2. Under 11.07C, we need evidence documenting that your cerebral palsy has resulted in significant interference in your ability to speak, hear, or see. We will find you have "significant interference" in your ability to speak, hear, or see if your signs, such as aphasia, strabismus, or sensorineural hearing loss, seriously limit your ability to communicate on a sustained basis.

3. Under 11.11B, we need evidence documenting that your post-polio syndrome has resulted in the inability to produce intelligible speech.

F. *What do we mean by bulbar and neuromuscular dysfunction?* The bulbar region of the brain is responsible for controlling the bulbar muscles in the throat, tongue, jaw, and face. Bulbar and neuromuscular dysfunction refers to weakness in these muscles, resulting in breathing, swallowing, and speaking impairments. Listings 11.11 (Post-polio syndrome), 11.12 (Myasthenia gravis), and 11.22 (Motor neuron disorders other than ALS) include criteria for evaluating bulbar and neuromuscular dysfunction. If your neurological disorder has resulted in a breathing disorder, we may evaluate that condition under the respiratory system, 3.00.

G. *How do we evaluate limitations in physical and mental functioning under these listings?*

1. Neurological disorders may manifest in a combination of limitations in physical and mental functioning. We consider all relevant information in your case record to determine the effects of your neurological disorder on your physical and mental functioning. To satisfy the requirement described under 11.00G, your neurological disorder must result in a marked limitation in physical functioning and a marked limitation in at least one of four areas of mental functioning: Understanding, remembering, or applying information; interacting with others; concentrating, persisting, or maintaining pace; or adapting or managing oneself. If your neurological disorder results in an extreme limitation in at least one of the four areas of mental functioning, or results in marked limitation in at least two of the four areas of mental functioning, but you do not have at least a marked limitation in your physical functioning, we will consider whether your condition meets or medically equals one of the mental disorders body system listings, 12.00.

2. *Marked Limitation.* To satisfy the requirements of the functional criteria, your neurological disorder must result in a marked limitation in physical functioning and a marked limitation in one of the four areas of mental functioning (see 11.00G3). Although we do not require the use of such a scale, "marked" would be the fourth point on a five-point scale consisting of no limitation, mild limitation, moderate limitation, marked limitation, and extreme limitation. We consider the nature and overall degree of interference with your functioning. The term "marked" does not require that you must be confined to bed, hospitalized, or in a nursing home.

a. *Marked limitation and physical functioning.* For this criterion, a marked limitation means that, due to the signs and symptoms of your neurological disorder, you are seriously limited in the ability to independently initiate, sustain, and complete work-related physical activities (see 11.00G3). You may have a marked limitation in your physical functioning when your neurological disease process causes persistent or intermittent symptoms that affect your abilities to independently initiate, sustain, and complete work-related activities, such as standing, balancing, walking, using both upper extremities for fine and gross movements, or results in limitations in using one upper and one lower extremity. The persistent and intermittent symptoms must result in a serious limitation in your ability to do a task or activity on a sustained basis. We do not define "marked" by a specific number of different physical activities or tasks that demonstrate your ability, but by the overall effects of your neurological symptoms on your ability to perform such physical activities on a consistent and sustained basis. You need not be totally precluded from performing a function or activity to have a marked limitation, as long as the degree of limitation seriously limits your ability to independently initiate, sustain, and complete work-related physical activities.

b. *Marked limitation and mental functioning.* For this criterion, a marked limitation means that, due to the signs and symptoms of your neurological disorder, you are seriously limited in the ability to function independently, appropriately, effectively, and on a sustained basis in work settings (see 11.03G3). We do not define "marked" by a specific number of mental activities, such as: The number of activities that demonstrate your ability to understand, remember, and apply information; the number of tasks that demonstrate your ability to interact with others; a specific number of tasks that demonstrate you are able to concentrate, persist or maintain pace; or a specific number of tasks that demonstrate you are able to manage yourself. You may have a marked limitation in your mental functioning when several activities or functions are impaired, or even when only one is impaired. You need not be totally precluded from performing an activity to have a marked limitation, as long as the degree of limitation seriously limits your ability to function independently, appropriately, and effectively on a sustained basis, and complete work-related mental activities.

3. *Areas of physical and mental functioning.*

a. *Physical functioning.* Examples of this criterion include specific motor abilities, such as independently initiating, sustaining, and completing the following activities: Standing up from a seated position, balancing while standing or walking, or using both your upper extremities for fine and gross movements (see 11.00D). Physical functioning may also include functions of the body that support motor abilities, such as the abilities to see, breathe, and swallow (see 11.00E and 11.00F). Examples of when your limitation in seeing, breathing, or swallowing may, on its own, rise to a "marked" limitation include: Prolonged and uncorrectable double vision causing difficulty with balance; prolonged difficulty breathing requiring the use of a prescribed assistive breathing device, such as a portable continuous positive airway pressure machine; or repeated instances, occurring at least weekly, of aspiration without causing aspiration pneumonia. Alternatively, you may have a combination of limitations due to your neurological disorder that together rise to a "marked" limitation in physical functioning. We may also find that you have a "marked" limitation in this area if, for example, your symptoms, such as pain or fatigue (see 11.00T), as documented in your medical record, and caused by your neurological disorder or its treatment, seriously limit your ability to independently initiate, sustain, and complete these work-related motor functions, or the other physical functions or physiological processes that support those motor functions. We may also find you seriously limited in an area if, while you retain some ability to perform the function, you are unable to do so consistently and on a sustained basis. The limitation in your physical functioning must last or be expected to last at least 12 months. These examples illustrate the nature of physical functioning. We do not require documentation of all of the examples.

b. *Mental functioning.*

(i) *Understanding, remembering, or applying information.* This area of mental functioning refers to the abilities to learn, recall, and use information to perform work activities. Examples include: Understanding and learning terms, instructions, procedures; following one- or two-step oral instructions to carry out a task; describing work activity to someone else; asking and answering questions and providing explanations; recognizing a mistake and correcting it; identifying and solving problems; sequencing multi-step activities; and using reason and judgment to make work-related decisions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

(ii) *Interacting with others.* This area of mental functioning refers to the abilities to relate to and work with supervisors, co-workers, and the public. Examples include: Cooperating with others; asking for help when needed; handling conflicts with others; stating your own point of view; initiating or sustaining conversation; understanding and responding to social cues (physical, verbal, emotional); responding to requests, suggestions, criticism, correction, and challenges; and keeping social interactions free of excessive irritability, sensitivity, argumentativeness, or suspiciousness. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

(iii) *Concentrating, persisting, or maintaining pace.* This area of mental functioning refers to the abilities to focus attention on work activities and to stay on-task at a sustained rate. Examples include: Initiating and performing a task that you understand and know how to do; working at an appropriate and consistent pace; completing tasks in a timely manner; ignoring or avoiding distractions while working; changing activities or work settings without being disruptive; working close to or with others without interrupting or distracting them; sustaining an ordinary routine and regular attendance at work; and working a full day without needing more than the allotted number or length of rest periods during the day. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

(iv) *Adapting or managing oneself.* This area of mental functioning refers to the abilities to regulate emotions, control behavior, and maintain well-being in a work setting. Examples include: Responding to demands; adapting to changes; managing your psychologically based symptoms; distinguishing between acceptable and unacceptable work performance; setting realistic goals; making plans for yourself independently of others; maintaining personal hygiene and attire appropriate to a work setting; and being aware of normal hazards and taking appropriate precautions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

4. *Signs and symptoms of your disorder and the effects of treatment.*

a. We will consider your signs and symptoms and how they affect your ability to function in the work place. When we evaluate your functioning, we will consider whether your signs and symptoms are persistent or intermittent, how frequently they occur and how long they last, their intensity, and whether you have periods of exacerbation and remission.

b. We will consider the effectiveness of treatment in improving the signs, symptoms, and laboratory findings related to your neurological disorder, as well as any aspects of treatment that may interfere with your ability to function. We will consider, for example: The effects of medications you take (including side effects); the time-limited efficacy of some medications; the intrusiveness, complexity, and duration of your treatment (for example, the dosing schedule or need for injections); the effects of treatment, including medications, therapy, and surgery, on your functioning; the variability of your response to treatment; and any drug interactions.

H. *What is epilepsy, and how do we evaluate it under 11.02?*

1. *Epilepsy* is a pattern of recurrent and unprovoked seizures that are manifestations of abnormal electrical activity in the brain. There are various types of generalized and "focal" or partial seizures. However, psychogenic nonepileptic seizures and pseudoseizures are not epileptic seizures for the purpose of 11.02. We evaluate psychogenic seizures and pseudoseizures under the mental disorders body system, 12.00. In adults, the most common potentially disabling seizure types are *generalized tonic-clonic seizures* and *dyscognitive seizures* (formerly complex partial seizures).

a. *Generalized tonic-clonic seizures* are characterized by loss of consciousness accompanied by a tonic phase (sudden muscle tensing causing the person to lose postural control) followed by a clonic phase (rapid cycles of muscle contraction and relaxation, also called convulsions). Tongue biting and incontinence may occur during generalized tonic-clonic seizures, and injuries may result from falling.

b. *Dyscognitive seizures* are characterized by alteration of consciousness without convulsions or loss of muscle control. During the seizure, blank staring, change of facial expression, and automatisms (such as lip smacking, chewing or swallowing, or repetitive simple actions, such as gestures or verbal utterances) may occur. During its course, a dyscognitive seizure may progress into a generalized tonic-clonic seizure (see 11.00H1a).

2. *Description of seizure.* We require at least one detailed description of your seizures from someone, preferably a medical professional, who has observed at least one of your typical seizures. If you experience more than one type of seizure, we require a description of each type.

3. *Serum drug levels.* We do not require serum drug levels; therefore, we will not purchase them. However, if serum drug levels are available in your medical records, we will evaluate them in the context of the other evidence in your case record.

4. *Counting seizures.* The period specified in 11.02A, B, or C cannot begin earlier than one month after you began prescribed treatment. The required number of seizures must occur within the period we are considering in connection with your application or continuing disability review. When we evaluate the frequency of your seizures, we also consider your adherence to prescribed treatment (see 11.00C). When we determine the number of seizures you have had in the specified period, we will:

a. Count multiple seizures occurring in a 24-hour period as one seizure.

b. Count status epilepticus (a continuous series of seizures without return to consciousness between seizures) as one seizure.

c. Count a dyscognitive seizure that progresses into a generalized tonic-clonic seizure as one generalized tonic-clonic seizure.

d. We do not count seizures that occur during a period when you are not adhering to prescribed treatment without good reason. When we determine that you had good reason for not adhering to prescribed treatment, we will consider your physical, mental, educational, and communicative limitations (including any language barriers). We will consider you to have good reason for not following prescribed treatment if, for example, the treatment is very risky for you due to its consequences or unusual nature, or if you are unable to afford prescribed treatment that you are willing to accept, but for which no free community resources are available. We will follow guidelines found in our policy, such as §§ 404.1530(c) and 416.930(c) of this chapter, when we determine whether you have a good reason for not adhering to prescribed treatment.

e. We do not count psychogenic nonepileptic seizures or pseudoseizures under 11.02. We evaluate these seizures under the mental disorders body system, 12.00.

5. *Electroencephalography (EEG) testing.* We do not require EEG test results; therefore,

we will not purchase them. However, if EEG test results are available in your medical records, we will evaluate them in the context of the other evidence in your case record.

I. *What is vascular insult to the brain, and how do we evaluate it under 11.04?*

1. *Vascular insult to the brain* (cerebrum, cerebellum, or brainstem), commonly referred to as stroke or cerebrovascular accident (CVA), is brain cell death caused by an interruption of blood flow within or leading to the brain, or by a hemorrhage from a ruptured blood vessel or aneurysm in the brain. If you have a vision impairment resulting from your vascular insult, we may evaluate that impairment under the special senses body system, 2.00.

2. We need evidence of sensory or motor aphasia that results in ineffective speech or communication under 11.04A (see 11.00E). We may evaluate your communication impairment under listing 11.04C if you have marked limitation in physical functioning and marked limitation in one of the four areas of mental functioning.

3. We generally need evidence from at least 3 months after the vascular insult to evaluate whether you have disorganization of motor functioning under 11.04B, or the impact that your disorder has on your physical and mental functioning under 11.04C. In some cases, evidence of your vascular insult is sufficient to allow your claim within 3 months post-vascular insult. If we are unable to allow your claim within 3 months after your vascular insult, we will defer adjudication of the claim until we obtain evidence of your neurological disorder at least 3 months post-vascular insult.

J. *What are benign brain tumors, and how do we evaluate them under 11.05?* Benign brain tumors are noncancerous (nonmalignant) abnormal growths of tissue in or on the brain that invade healthy brain tissue or apply pressure on the brain or cranial nerves. We evaluate their effects on your functioning as discussed in 11.00D and 11.00G. We evaluate malignant brain tumors under the cancer body system in 13.00. If you have a vision impairment resulting from your benign brain tumor, we may evaluate that impairment under the special senses body system, 2.00.

K. *What is Parkinsonian syndrome, and how do we evaluate it under 11.06?* Parkinsonian syndrome is a term that describes a group of chronic, progressive movement disorders resulting from loss or decline in the function of dopamine-producing brain cells. Dopamine is a neurotransmitter that regulates muscle movement throughout the body. When we evaluate your Parkinsonian syndrome, we will consider your adherence to prescribed treatment (see 11.00C).

L. *What is cerebral palsy, and how do we evaluate it under 11.07?*

1. *Cerebral palsy (CP)* is a term that describes a group of static, nonprogressive disorders caused by abnormalities within the brain that disrupt the brain's ability to control movement, muscle coordination, and posture. The resulting motor deficits manifest very early in a person's development, with delayed or abnormal progress in attaining developmental milestones. Deficits may become more obvious as the person grows and matures over time.

2. We evaluate your signs and symptoms, such as ataxia, spasticity, flaccidity, athetosis, chorea, and difficulty with precise movements when we determine your ability to stand up, balance, walk, or perform fine and gross motor movements. We will also evaluate your signs, such as dysarthria and apraxia of speech, and receptive and expressive language problems when we determine your ability to communicate.

3. We will consider your other impairments or signs and symptoms that develop secondary to the disorder, such as post-impairment syndrome (a combination of pain, fatigue, and weakness due to muscle abnormalities); overuse syndromes (repetitive motion injuries); arthritis; abnormalities of proprioception (perception of the movements and position of the body); abnormalities of stereognosis (perception and identification of objects by touch); learning problems; anxiety; and depression.

M. *What are spinal cord disorders, and how do we evaluate them under 11.08?*

1. *Spinal cord disorders* may be congenital or caused by injury to the spinal cord. Motor signs and symptoms of spinal cord disorders include paralysis, flaccidity, spasticity, and weakness.

2. *Spinal cord disorders with complete loss of function* (11.08A) addresses spinal cord disorders that result in a complete lack of motor, sensory, and autonomic function of the affected part(s) of the body.

3. *Spinal cord disorders with disorganization of motor function* (11.08B) addresses spinal cord disorders that result in less than a complete loss of function of the affected part(s) of the body, reducing, but not eliminating, motor, sensory, and autonomic function.

4. When we evaluate your spinal cord disorder, we generally need evidence from at least 3 months after your symptoms began in order to evaluate your disorganization of motor function. In some cases, evidence of your spinal cord disorder may be sufficient to allow your claim within 3 months after the spinal cord disorder. If the medical evidence demonstrates total cord transection causing a loss of motor and sensory functions below the level of injury, we will not wait 3 months but will make the allowance decision immediately.

N. *What is multiple sclerosis, and how do we evaluate it under 11.09?*

1. *Multiple sclerosis (MS)* is a chronic, inflammatory, degenerative disorder that damages the myelin sheath surrounding the nerve fibers in the brain and spinal cord. The damage disrupts the normal transmission of nerve impulses within the brain and between the brain and other parts of the body, causing impairment in muscle coordination, strength, balance, sensation, and vision. There are several forms of MS, ranging from mildly to highly aggressive. Milder forms generally involve acute attacks (exacerbations) with partial or complete recovery from signs and symptoms (remissions). Aggressive forms generally exhibit a steady progression of signs and symptoms with few or no remissions. The effects of all forms vary from person to person.

2. We evaluate your signs and symptoms, such as flaccidity, spasticity, spasms, incoordination, imbalance, tremor, physical fatigue, muscle weakness, dizziness, tingling, and numbness when we determine your ability to stand up, balance, walk, or perform fine and gross motor movements. When determining whether you have limitations of physical and mental functioning, we will consider your other impairments or signs and symptoms that develop secondary to the disorder, such as fatigue; visual loss; trouble sleeping; impaired attention, concentration, memory, or judgment; mood swings; and depression. If you have a vision impairment resulting from your MS, we may evaluate that impairment under the special senses body system, 2.00.

O. *What is amyotrophic lateral sclerosis, and how do we evaluate it under 11.10? Amyotrophic lateral sclerosis (ALS)* is a type of motor neuron disorder that rapidly and progressively attacks the nerve cells responsible for controlling voluntary muscles. We establish ALS under 11.10 when you have a documented diagnosis of ALS. We require documentation based on generally accepted methods consistent with the prevailing state of medical knowledge and clinical practice. We require laboratory testing to establish the diagnosis when the clinical findings of upper and lower motor neuron disease are not present in three or more regions. Electrophysiological studies, such as nerve conduction velocity studies and electromyography (EMG), may support your diagnosis of ALS; however, we will not purchase these studies.

P. *What are neurodegenerative disorders of the central nervous system, such as Huntington's disease, Friedreich's ataxia, and spinocerebellar degeneration, and how do we evaluate them under 11.17?* Neurodegenerative disorders of the central nervous system are disorders characterized by progressive and irreversible degeneration of neurons or their supporting cells. Over time, these disorders impair many of the body's motor, cognitive, and other mental functions. We consider neurodegenerative disorders of the central nervous system under 11.17 that we do not evaluate elsewhere in section 11.00, such as Huntington's disease (HD), Friedreich's ataxia, spinocerebellar degeneration, Creutzfeldt-Jakob disease (CJD), progressive supranuclear palsy (PSP), early-onset Alzheimer's disease, and frontotemporal dementia (Pick's disease). When these disorders result in solely cognitive and other mental function effects, we will evaluate the disorder under the mental disorder listings.

Q. *What is traumatic brain injury, and how do we evaluate it under 11.18?*

1. *Traumatic brain injury (TBI)* is damage to the brain resulting from skull fracture, collision with an external force leading to a closed head injury, or penetration by an object that enters the skull and makes contact with brain tissue. We evaluate TBI that results in coma or persistent vegetative state (PVS) under 11.20.

2. We generally need evidence from at least 3 months after the TBI to evaluate whether you have disorganization of motor function under 11.18A or the impact that your

disorder has on your physical and mental functioning under 11.18B. In some cases, evidence of your TBI is sufficient to determine disability within 3 months post-TBI. If we are unable to allow your claim within 3 months post-TBI, we will defer adjudication of the claim until we obtain evidence of your neurological disorder at least 3 months post-TBI. If a finding of disability still is not possible at that time, we will again defer adjudication of the claim until we obtain evidence at least 6 months after your TBI.

R. *What are coma and persistent vegetative state, and how do we evaluate them under 11.20?* Coma is a state of unconsciousness in which a person does not exhibit a sleep/wake cycle, and is unable to perceive or respond to external stimuli. People who do not fully emerge from coma may progress into a persistent vegetative state (PVS). PVS is a condition of partial arousal in which a person may have a low level of consciousness but is still unable to react to external stimuli. In contrast to coma, a person in a PVS retains sleep/wake cycles and may exhibit some key lower brain functions, such as spontaneous movement, opening and moving eyes, and grimacing. Coma or PVS may result from TBI, a nontraumatic insult to the brain (such as a vascular insult, infection, or brain tumor), or a neurodegenerative or metabolic disorder. Medically induced comas are not considered under 11.20 and should be considered under the section pertaining to the underlying reason the coma was medically induced and not under this section.

S. *What are motor neuron disorders, other than ALS, and how do we evaluate them under 11.22?* Motor neuron disorders such as progressive bulbar palsy, primary lateral sclerosis (PLS), and spinal muscular atrophy (SMA) are progressive neurological disorders that destroy the cells that control voluntary muscle activity, such as walking, breathing, swallowing, and speaking. We evaluate the effects of these disorders on motor functioning, bulbar and neuromuscular functioning, oral communication, or limitations in physical and mental functioning.

T. *How do we consider symptoms of fatigue in these listings?* Fatigue is one of the most common and limiting symptoms of some neurological disorders, such as multiple sclerosis, post-polio syndrome, and myasthenia gravis. These disorders may result in physical fatigue (lack of muscle strength) or mental fatigue (decreased awareness or attention). When we evaluate your fatigue, we will consider the intensity, persistence, and effects of fatigue on your functioning. This may include information such as the clinical and laboratory data and other objective evidence concerning your neurological deficit, a description of fatigue considered characteristic of your disorder, and information about your functioning. We consider the effects of physical fatigue on your ability to stand up, balance, walk, or perform fine and gross motor movements using the criteria described in 11.00D. We consider the effects of physical and mental fatigue when we evaluate your physical and mental functioning described in 11.00G.

U. *How do we evaluate your neurological disorder when it does not meet one of these listings?*

1. If your neurological disorder does not meet the criteria of any of these listings, we must also consider whether your impairment(s) meets the criteria of a listing in another body system. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter.

2. If your impairment(s) does not meet or medically equal the criteria of a listing, you may or may not have the residual functional capacity to perform your past relevant work or adjust to other work that exists in significant numbers in the national economy, which we determine at the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter.

3. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

11.01 Category of Impairments, Neurological Disorders

11.02 *Epilepsy,* documented by a detailed description of a typical seizure and characterized by A, B, C, or D:

A. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once a month for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); or

B. Dyscognitive seizures (see 11.00H1b), occurring at least once a week for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); or

C. Generalized tonic-clonic seizures (see 11.00H1a), occurring at least once every 2 months for at least 4 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the following:

1. Physical functioning (see 11.00G3a); or
2. Understanding, remembering, or applying information (see 11.00G3b(i)); or
3. Interacting with others (see 11.00G3b(ii)); or
4. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
5. Adapting or managing oneself (see 11.00G3b(iv)); or

D. Dyscognitive seizures (see 11.00H1b), occurring at least once every 2 weeks for at least 3 consecutive months (see 11.00H4) despite adherence to prescribed treatment (see 11.00C); and a marked limitation in one of the following:

1. Physical functioning (see 11.00G3a); or
2. Understanding, remembering, or applying information (see 11.00G3b(i)); or
3. Interacting with others (see 11.00G3b(ii)); or
4. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
5. Adapting or managing oneself (see 11.00G3b(iv)).

11.03 [Reserved]

11.04 *Vascular insult to the brain,* characterized by A, B, or C:

A. Sensory or motor aphasia resulting in ineffective speech or communication (see 11.00E1) persisting for at least 3 consecutive months after the insult; or

B. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the insult; or

C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a) and in one of the following areas of mental functioning, both persisting for at least 3 consecutive months after the insult:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv)).

11.05 *Benign brain tumors,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv)).

11.06 *Parkinsonian syndrome,* characterized by A or B despite adherence to prescribed treatment for at least 3 consecutive months (see 11.00C):

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv)).

11.07 *Cerebral palsy,* characterized by A, B, or C:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)); or

C. Significant interference in communication due to speech, hearing, or visual deficit (see 11.00E2).

11.08 *Spinal cord disorders,* characterized by A, B, or C:

A. Complete loss of function, as described in 11.00M2, persisting for 3 consecutive months after the disorder (see 11.00M4); or

B. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities persisting for 3 consecutive months after the disorder (see 11.00M4); or

C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a) and in one of the following areas of mental functioning, both persisting for 3 consecutive months after the disorder (see 11.00M4):

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.09 *Multiple sclerosis,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.10 *Amyotrophic lateral sclerosis (ALS)* established by clinical and laboratory findings (see 11.00O).

11.11 *Post-polio syndrome,* characterized by A, B, C, or D:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Unintelligible speech (see 11.00E3); or

C. Bulbar and neuromuscular dysfunction (see 11.00F), resulting in:

1. Acute respiratory failure requiring mechanical ventilation; or

2. Need for supplemental enteral nutrition via a gastrostomy or parenteral nutrition via a central venous catheter; or

D. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.12 *Myasthenia gravis,* characterized by A, B, or C despite adherence to prescribed treatment for at least 3 months (see 11.00C):

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Bulbar and neuromuscular dysfunction (see 11.00F), resulting in:

1. One myasthenic crisis requiring mechanical ventilation; or

2. Need for supplemental enteral nutrition via a gastrostomy or parenteral nutrition via a central venous catheter; or

C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.13 *Muscular dystrophy,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.14 *Peripheral neuropathy,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.15 [Reserved]

11.16 [Reserved]

11.17 *Neurodegenerative disorders of the central nervous system, such as Huntington's disease, Friedreich's ataxia, and spinocerebellar degeneration,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.18 *Traumatic brain injury,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the injury; or

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following areas of mental functioning, persisting for at least 3 consecutive months after the injury:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

11.19 [Reserved]

11.20 *Coma or persistent vegetative state,* persisting for at least 1 month.

11.21 [Reserved]

11.22 *Motor neuron disorders other than ALS,* characterized by A, B, or C:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Bulbar and neuromuscular dysfunction (see 11.00F), resulting in:

1. Acute respiratory failure requiring invasive mechanical ventilation; or

2. Need for supplemental enteral nutrition via a gastrostomy or parenteral nutrition via a central venous catheter; or

C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or

2. Interacting with others (see 11.00G3b(ii)); or

3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or

4. Adapting or managing oneself (see 11.00G3b(iv)).

* * * * *

12.00 MENTAL DISORDERS

* * * * *

D. * * *

10. *Traumatic brain injury (TBI).* In cases involving TBI, follow the documentation and evaluation guidelines in 11.00Q.

* * * * *

12.01 Category of Impairments, Mental Disorders

* * * * *

12.09 * * *

E. Peripheral neuropathy. Evaluate under 11.14.

* * * * *

I. Seizures. Evaluate under 11.02.

* * * * *

Part B

* * * * *

111.00 Neurological Disorders

* * * * *

101.00 MUSCULOSKELETAL SYSTEM

* * * * *

B. *Loss of function.*

1. *General.* * * * We evaluate impairments with neurological causes under 111.00, as appropriate.

* * * * *

K. *Disorders of the spine,* listed in 101.04, result in limitations because of distortion of the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissue may result from a herniated nucleus pulposus, spinal stenosis, arachnoiditis, or other miscellaneous conditions.

* * * * *

111.00 NEUROLOGICAL DISORDERS

A. *Which neurological disorders do we evaluate under these listings?* We evaluate epilepsy, coma or persistent vegetative state (PVS), and neurological disorders that cause disorganization of motor function, bulbar and neuromuscular dysfunction, or communication impairment. Under this body system, we evaluate the limitations resulting from the impact of the neurological disease process itself. If you have a neurological disorder(s) that affects your physical and mental functioning, we will evaluate your impairments under the rules we use to determine functional equivalence. If your neurological disorder results in only mental impairment or if you have a co-occurring mental condition that is not caused by your neurological disorder (for example, Autism spectrum disorder), we will evaluate your mental impairment under the mental disorders body system, 112.00.

B. *What evidence do we need to document your neurological disorder?*

1. We need both medical and non-medical evidence (signs, symptoms, and laboratory findings) to assess the effects of your neurological disorder. Medical evidence should include your medical history, examination findings, relevant laboratory tests, and the results of imaging. Imaging refers to medical imaging techniques, such as x-ray, computerized tomography (CT), magnetic resonance imaging (MRI), and electroencephalography (EEG). The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder. In addition, the medical evidence may include descriptions of any prescribed treatment and your response to it. We consider non-medical evidence such as statements you or others make about your impairments, your restrictions, your daily activities, or, if you are an adolescent, your efforts to work.

2. We will make every reasonable effort to obtain the results of your laboratory and imaging evidence. When the results of any of these tests are part of the existing evidence in your case record, we will evaluate the test results and all other relevant evidence. We will not purchase imaging, or other diagnostic tests or laboratory tests that are complex, may involve significant risk, or that are invasive. We will not routinely purchase tests that are expensive or not readily available.

C. *How do we consider adherence to prescribed treatment in neurological disorders?* In 111.02 (Epilepsy) and 111.12 (Myasthenia gravis), we require that limitations from these neurological disorders exist despite adherence to prescribed treatment. "Despite adherence to prescribed treatment" means that you have taken medication(s) or followed other treatment procedures for your neurological disorder(s) as prescribed by a physician for three consecutive months but your impairment continues to meet the other listing requirements despite this treatment. You may receive your treatment at a health care facility that you visit regularly, even if you do not see the same physician on each visit.

D. *What do we mean by disorganization of motor function?*

1. *Disorganization of motor function* means interference, due to your neurological disorder, with movement of two extremities; *i.e.,* the lower extremities, or upper extremities (including fingers, wrists, hands, arms, and shoulders). By two extremities we mean both lower extremities, or both upper extremities, or one upper extremity and one lower extremity. All listings in this body system, except for 111.02 (Epilepsy) and 111.20 (Coma and persistent vegetative state), include criteria for disorganization of motor function that results in an extreme limitation in your ability to:

a. Stand up from a seated position; or

b. Balance while standing or walking; or

c. Use the upper extremities (*e.g.,* fingers, wrists, hands, arms, and shoulders).

2. *Extreme limitation* means the inability to stand up from a seated position, maintain balance in a standing position and while walking, or use your upper extremities to independently initiate, sustain, and complete age-appropriate activities. The assessment of motor function depends on the degree of interference with standing up; balancing while standing or walking; or using the upper extremities (including fingers, hands, arms, and shoulders).

a. Inability to stand up from a seated position means that once seated you are unable to stand and maintain an upright position without the assistance of another person or the use of an assistive device, such as a walker, two crutches, or two canes.

b. Inability to maintain balance in a standing position means that you are unable to maintain an upright position while standing or walking without the assistance of another person or an assistive device, such as a walker, two crutches, or two canes.

c. Inability to use your upper extremities means that you have a loss of function of both upper extremities (*e.g.,* fingers, wrists, hands, arms, and shoulders) that very seriously limits your ability to independently initiate, sustain, and complete age-appropriate activities involving fine and gross motor movements. Inability to perform fine and gross motor movements could include not being able to pinch, manipulate, and use your fingers; or not being able to use your hands, arms, and shoulders to perform gross motor movements, such as handling, gripping, grasping, holding, turning, and reaching; or not being able to engage in exertional movements such a lifting, carrying, pushing, and pulling.

3. For children who are not yet able to balance, stand up, or walk independently, we consider their function based on assessments of limitations in the ability to perform comparable age-appropriate activities with the lower and upper extremities, given normal developmental milestones. For such children, an extreme level of limitation means developmental milestones at less than one-half of the child's chronological age.

E. *What do we mean by bulbar and neuromuscular dysfunction?* The bulbar region of the brain is responsible for controlling the bulbar muscles in the throat, tongue, jaw, and face. Bulbar and neuromuscular dysfunction refers to weakness in these muscles, resulting in breathing, swallowing, and speaking impairments. Listings 111.12 (Myasthenia gravis) and 111.22 (Motor neuron disorders) include criteria for evaluating bulbar and neuromuscular dysfunction. If your neurological disorder has resulted in a breathing disorder, we may evaluate that condition under the respiratory system, 103.00.

F. *What is epilepsy, and how do we evaluate it under 111.02?*

1. *Epilepsy* is a pattern of recurrent and unprovoked seizures that are manifestations of abnormal electrical activity in the brain. There are various types of generalized and "focal" or partial seizures. In children, the most common potentially disabling seizure types are *generalized tonic-clonic seizures, dyscognitive seizures* (formerly complex partial seizures), *and absence seizures.* However, psychogenic nonepileptic seizures and pseudoseizures are not epileptic seizures for the purpose of 111.02. We evaluate psychogenic seizures and pseudoseizures under the mental disorders body system, 112.00.

a. *Generalized tonic-clonic seizures* are characterized by loss of consciousness accompanied by a tonic phase (sudden muscle tensing causing the child to lose postural control) followed by a clonic phase (rapid cycles of muscle contraction and relaxation, also called convulsions). Tongue biting and incontinence may occur during generalized tonic-clonic seizures, and injuries may result from falling.

b. *Dyscognitive seizures* are characterized by alteration of consciousness without convulsions or loss of muscle control. During the seizure, blank staring, change of facial expression, and automatisms (such as lip smacking, chewing or swallowing, or repetitive simple actions, such as gestures or verbal utterances) may occur. During its course, a dyscognitive seizure may progress into a generalized tonic-clonic seizure (see 111.00F1a).

c. *Absence seizures (petit mal)* are also characterized by an alteration in consciousness, but are shorter than other generalized seizures (*e.g.*, tonic-clonic and dyscognitive) seizures, generally lasting for only a few seconds rather than minutes. They may present with blank staring, change of facial expression, lack of awareness and responsiveness, and a sense of lost time after the seizure. An aura never precedes absence seizures. Although absence seizures are brief, frequent occurrence may limit functioning. This type of seizure usually does not occur after adolescence.

d. *Febrile seizures* may occur in young children in association with febrile illnesses. We will consider seizures occurring during febrile illnesses. To meet 111.02, we require documentation of seizures during nonfebrile periods and epilepsy must be established.

2. *Description of seizure.* We require at least one detailed description of your seizures from someone, preferably a medical professional, who has observed at least one of your typical seizures. If you experience more than one type of seizure, we require a description of each type.

3. *Serum drug levels.* We do not require serum drug levels; therefore, we will not purchase them. However, if serum drug levels are available in your medical records, we will evaluate them in the context of the other evidence in your case record.

4. *Counting seizures.* The period specified in 111.02A or B cannot begin earlier than one month after you began prescribed treatment. The required number of seizures must occur within the period we are considering in connection with your application or continuing disability review. When we evaluate the frequency of your seizures, we also consider your adherence to prescribed treatment (see 111.00C). When we determine the number of seizures you have had in the specified period, we will:

a. Count multiple seizures occurring in a 24-hour period as one seizure.

b. Count status epilepticus (a continuous series of seizures without return to consciousness between seizures) as one seizure.

c. Count a dyscognitive seizure that progresses into a generalized tonic-clonic seizure as one generalized tonic-clonic seizure.

d. We do not count seizures that occur during a period when you are not adhering to prescribed treatment without good reason. When we determine that you had a good reason for not adhering to prescribed treatment, we will consider your physical, mental, educational, and communicative limitations (including any language barriers). We will consider you to have good reason for not following prescribed treatment if, for example, the treatment is very risky for you due to its consequences or unusual nature, or if you are unable to afford prescribed treatment that you are willing to accept, but for which no free community resources are available. We will follow guidelines found in our policy, such as § 416.930(c) of this chapter, when we determine whether you have a good reason for not adhering to prescribed treatment.

e. We do not count psychogenic nonepileptic seizures or pseudoseizures under 111.02.We evaluate these seizures under the mental disorders body system, 112.00.

5. *Electroencephalography (EEG) testing.* We do not require EEG test results; therefore, we will not purchase them. However, if EEG test results are available in your medical records, we will evaluate them in the context of the other evidence in your case record.

G. *What is vascular insult to the brain, and how do we evaluate it under 111.04?*

1. *Vascular insult to the brain* (cerebrum, cerebellum, or brainstem), commonly referred to as stroke or cerebrovascular accident (CVA), is brain cell death caused by an interruption of blood flow within or leading to the brain, or by a hemorrhage from a ruptured blood vessel or aneurysm in the brain. If you have a vision impairment resulting from your vascular insult, we may evaluate that impairment under the special senses body system, 102.00.

2. We generally need evidence from at least 3 months after the vascular insult to determine whether you have disorganization of motor function under 111.04. In some cases, evidence of your vascular insult is sufficient to allow your claim within 3 months post-vascular insult. If we are unable to allow your claim within 3 months after your vascular insult, we will defer adjudication of the claim until we obtain evidence of your neurological disorder at least 3 months post-vascular insult.

H. *What are benign brain tumors, and how do we evaluate them under 111.05?* Benign brain tumors are noncancerous (nonmalignant) abnormal growths of tissue in or on the brain that invade healthy brain tissue or apply pressure on the brain or cranial nerves. We evaluate their effects on your functioning as discussed in 111.00D. We evaluate malignant brain tumors under the cancer body system in 113.00. If you have a vision impairment resulting from your benign brain tumor, we may evaluate that impairment under the special senses body system, 102.00.

I. *What is cerebral palsy, and how do we evaluate it under 111.07?*

1. *Cerebral palsy (CP)* is a term that describes a group of static, nonprogressive disorders caused by abnormalities within the brain that disrupt the brain's ability to control movement, muscle coordination, and posture. The resulting motor deficits manifest very early in a child's development, with delayed or abnormal progress in attaining developmental milestones; deficits may become more obvious as the child grows and matures over time.

2. We evaluate your signs and symptoms, such as ataxia, spasticity, flaccidity, athetosis, chorea, and difficulty with precise movements when we determine your ability to stand up, balance, walk, or perform fine and gross motor movements. We will also evaluate your signs, such as dysarthria and apraxia of speech, and receptive and expressive language problems when we determine your ability to communicate.

3. We will consider your other impairments or signs and symptoms that develop secondary to the disorder, such as post-impairment syndrome (a combination of pain, fatigue, and weakness due to muscle abnormalities); overuse syndromes (repetitive motion injuries); arthritis; abnormalities of proprioception (perception of the movements and position of the body); abnormalities of stereognosis (perception and identification of objects by touch); learning problems; anxiety; and depression.

J. *What are spinal cord disorders, and how do we evaluate them under 111.08?*

1. *Spinal cord disorders* may be congenital or caused by injury to the spinal cord. Motor signs and symptoms of spinal cord disorders include paralysis, flaccidity, spasticity, and weakness.

2. *Spinal cord disorders with complete loss of function* (111.08A) addresses spinal cord disorders that result in complete lack of motor, sensory, and autonomic function of the affected part(s) of the body.

3. *Spinal cord disorders with disorganization of motor function* (111.08B) addresses spinal cord disorders that result in less than complete loss of function of the affected part(s) of the body, reducing, but not eliminating, motor, sensory, and autonomic function.

4. When we evaluate your spinal cord disorder, we generally need evidence from at least 3 months after your symptoms began in order to evaluate your disorganization of motor function. In some cases, evidence of your spinal cord disorder may be sufficient to allow your claim within 3 months after the spinal cord disorder. If the medical evidence demonstrates total cord transection causing a loss of motor and sensory functions below the level of injury, we will not wait 3 months but will make the allowance decision immediately.

K. *What are communication impairments associated with neurological disorders, and how do we evaluate them under 111.09?*

1. Communication impairments result from medically determinable neurological disorders that cause dysfunction in the parts of the brain responsible for speech and language. Under 111.09, we must have recent comprehensive evaluation including all areas of affective and effective communication, performed by a qualified professional, to document a communication impairment associated with a neurological disorder.

2. Under 111.09A, we need documentation from a qualified professional that your neurological disorder has resulted in a speech deficit that significantly affects your ability to communicate. *Significantly affects* means that you demonstrate a serious limitation in communicating, and a person who is unfamiliar with you cannot easily understand or interpret your speech.

3. Under 111.09B, we need documentation from a qualified professional that shows that your neurological disorder has resulted in a comprehension deficit that results in ineffective verbal communication for your

age. For the purposes of 111.09B, *comprehension deficit* means a deficit in receptive language. Ineffective verbal communication means that you demonstrate serious limitation in your ability to communicate orally on the same level as other children of the same age and level of development.

4. Under 111.09C, we need documentation of a neurological disorder that has resulted in hearing loss. Your hearing loss will be evaluated under listing 102.10 or 102.11.

5. We evaluate speech deficits due to non-neurological disorders under 2.09.

L. *What are neurodegenerative disorders of the central nervous system, such as Juvenile-onset Huntington's disease and Friedreich's ataxia, and how do we evaluate them under 111.17?* Neurodegenerative disorders of the central nervous system are disorders characterized by progressive and irreversible degeneration of neurons or their supporting cells. Over time, these disorders impair many of the body's motor or cognitive and other mental functions. We consider neurodegenerative disorders of the central nervous system under 111.17 that we do not evaluate elsewhere in section 111.00, such as juvenile-onset Huntington's disease (HD) and Friedreich's ataxia. When these disorders result in solely cognitive and other mental functional limitations, we will evaluate the disorder under the mental disorder listings, 112.00.

M. *What is traumatic brain injury, and how do we evaluate it under 111.18?*

1. *Traumatic brain injury (TBI)* is damage to the brain resulting from skull fracture, collision with an external force leading to a closed head injury, or penetration by an object that enters the skull and makes contact with brain tissue. We evaluate a TBI that results in coma or persistent vegetative state (PVS) under 111.20.

2. We generally need evidence from at least 3 months after the TBI to evaluate whether you have disorganization of motor function under 111.18. In some cases, evidence of your TBI is sufficient to determine disability. If we are unable to allow your claim within 3 months post-TBI, we will defer adjudication of the claim until we obtain evidence of your neurological disorder at least 3 months post-TBI. If a finding of disability still is not possible at that time, we will again defer adjudication of the claim until we obtain evidence at least 6 months after your TBI.

N. *What are coma and persistent vegetative state, and how do we evaluate them under 111.20?* Coma is a state of unconsciousness in which a child does not exhibit a sleep/wake cycle, and is unable to perceive or respond to external stimuli. Children who do not fully emerge from coma may progress into persistent vegetative state (PVS). PVS is a condition of partial arousal in which a child may have a low level of consciousness but is still unable to react to external stimuli. In contrast to coma, a child in a PVS retains sleep/wake cycles and may exhibit some key lower brain functions, such as spontaneous movement, opening and moving eyes, and grimacing. Coma or PVS may result from a TBI, a nontraumatic insult to the brain (such as a vascular insult, infection, or brain tumor), or a neurodegenerative or metabolic disorder. Medically induced comas should be considered under the section pertaining to the underlying reason the coma was medically induced and not under this section.

O. *What is multiple sclerosis, and how do we evaluate it under 111.21?*

1. *Multiple sclerosis (MS)* is a chronic, inflammatory, degenerative disorder that damages the myelin sheath surrounding the nerve fibers in the brain and spinal cord. The damage disrupts the normal transmission of nerve impulses within the brain and between the brain and other parts of the body causing impairment in muscle coordination, strength, balance, sensation, and vision. There are several forms of MS, ranging from slightly to highly aggressive. Milder forms generally involve acute attacks (exacerbations) with partial or complete recovery from signs and symptoms (remissions). Aggressive forms generally exhibit a steady progression of signs and symptoms with few or no remissions. The effects of all forms vary from child to child.

2. We evaluate your signs and symptoms, such as flaccidity, spasticity, spasms, incoordination, imbalance, tremor, physical fatigue, muscle weakness, dizziness, tingling, and numbness when we determine your ability to stand up, balance, walk, or perform fine and gross motor movements, such as using your arms, hands, and fingers. If you have a vision impairment resulting from your MS, we may evaluate that impairment under the special senses body system, 102.00.

P. *What are motor neuron disorders, and how do we evaluate them under 111.22?* Motor neuron disorders are progressive neurological disorders that destroy the cells that control voluntary muscle activity, such as walking, breathing, swallowing, and speaking. The most common motor neuron disorders in children are progressive bulbar palsy and spinal muscular dystrophy syndromes. We evaluate the effects of these disorders on motor functioning or bulbar and neuromuscular functioning.

Q. *How do we consider symptoms of fatigue in these listings?* Fatigue is one of the most common and limiting symptoms of some neurological disorders, such as multiple sclerosis and myasthenia gravis. These disorders may result in physical fatigue (lack of muscle strength) or mental fatigue (decreased awareness or attention). When we evaluate your fatigue, we will consider the intensity, persistence, and effects of fatigue on your functioning. This may include information such as the clinical and laboratory data and other objective evidence concerning your neurological deficit, a description of fatigue considered characteristic of your disorder, and information about your functioning. We consider the effects of physical fatigue on your ability to stand up, balance, walk, or perform fine and gross motor movements using the criteria described in 111.00D.

R. *How do we evaluate your neurological disorder when it does not meet one of these listings?*

1. If your neurological disorder does not meet the criteria of any of these listings, we must also consider whether your impairment(s) meets the criteria of a listing in another body system. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See § 416.926 of this chapter.

2. If your impairment(s) does not meet or medically equal a listing, we will consider whether your impairment(s) functionally equals the listings. See § 416.926a of this chapter.

3. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

111.01 Category of Impairments, Neurological Disorders

111.02 *Epilepsy,* documented by a detailed description of a typical seizure and characterized by A or B:

A. Generalized tonic-clonic seizures (see 111.00F1a), occurring at least once a month for at least 3 consecutive months (see 111.00F4) despite adherence to prescribed treatment (see 111.00C); or

B. Dyscognitive seizures (see 111.00F1b) or absence seizures (see 111.00F1c), occurring at least once a week for at least 3 consecutive months (see 111.00F4) despite adherence to prescribed treatment (see 111.00C).

111.03 [Reserved]

111.04 *Vascular insult to the brain,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the insult.

111.05 *Benign brain tumors,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.06 [Reserved]

111.07 *Cerebral palsy,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.08 *Spinal cord disorders,* characterized by A or B:

A. Complete loss of function, as described in 111.00J2, persisting for 3 consecutive months after the disorder (see 111.00J4); or

B. Disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities persisting for 3 consecutive months after the disorder (see 111.00J4).

111.09 *Communication impairment,* associated with documented neurological disorder and one of the following:

A. Documented speech deficit that significantly affects (see 111.00K1) the clarity and content of the speech; or

B. Documented comprehension deficit resulting in ineffective verbal communication (see 111.00K2) for age; or

C. Impairment of hearing as described under the criteria in 102.10 or 102.11.

111.10 [Reserved]

111.11 [Reserved]

111.12 *Myasthenia gravis,* characterized by A or B despite adherence to prescribed treatment for at least 3 months (see 111.00C):

A. Disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Bulbar and neuromuscular dysfunction (see 111.00E), resulting in:

1. One myasthenic crisis requiring mechanical ventilation; or

2. Need for supplemental enteral nutrition via a gastrostomy or parenteral nutrition via a central venous catheter.

111.13 *Muscular dystrophy,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.14 *Peripheral neuropathy,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.15 [Reserved]

111.16 [Reserved]

111.17 *Neurodegenerative disorders of the central nervous system, such as Juvenile-onset Huntington's disease and Friedreich's ataxia,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.18 *Traumatic brain injury,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the injury.

111.19 [Reserved]

111.20 *Coma or persistent vegetative state,* persisting for at least 1 month.

111.21 *Multiple sclerosis,* characterized by disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

111.22 *Motor neuron disorders,* characterized by A or B:

A. Disorganization of motor function in two extremities (see 111.00D1), resulting in an extreme limitation (see 111.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities; or

B. Bulbar and neuromuscular dysfunction (see 111.00E), resulting in:

1. Acute respiratory failure requiring invasive mechanical ventilation; or

2. Need for supplemental enteral nutrition via a gastrostomy or parenteral nutrition via a central venous catheter.

[FR Doc. 2016–15306 Filed 6–30–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2015–D–1839]

The Food and Drug Administration's Policy on Declaring Small Amounts of Nutrients and Dietary Ingredients on Nutrition Labels; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is announcing the availability of a guidance for industry entitled "FDA's Policy on Declaring Small Amounts of Nutrients and Dietary Ingredients on Nutrition Labels: Guidance for Industry." The guidance explains to manufacturers of conventional foods and dietary supplements our policy on determining the amount to declare on the nutrition label for certain nutrients and dietary ingredients that are present in a small amount.

DATES: The guidance is available on July 1, 2016. Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–1839. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling (HFS–820), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Carole Adler, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a final guidance for industry entitled "FDA's Policy on Declaring Small Amounts of Nutrients and Dietary Ingredients on Nutrition Labels." We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of July 30, 2015, we made available a draft guidance for industry entitled "FDA's Policy on Declaring Small Amounts of Nutrients and Dietary Ingredients on Nutrition Labels." The draft guidance would explain to manufacturers of conventional foods and dietary supplements our policy on determining the amount to declare on the nutrition label for certain nutrients and dietary ingredients that are present in a small amount. We gave interested parties an opportunity to submit comments by September 28, 2015, for us to consider before beginning work on the final version of the guidance. We received a few comments on the draft guidance, yet most pertained to the Nutrition Facts label itself or to specific nutrients rather than our policy on the declaration of small amounts. We only made editorial changes to the guidance, which include updates to the list of nutrients in 21 CFR 101.9(g)(4) and (g)(5) consistent with the final rule entitled, "Food Labeling; Revision of the Nutrition and Supplement Facts Labels" that appeared in the **Federal Register** on May 27, 2016 (81 FR 33742). The guidance announced in this document finalizes the draft guidance dated July 2015.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: June 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15477 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 16

[Docket No. TTB–2016–0006; T.D. TTB–138]

RIN 1513–AC28

Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Interim final rule (Treasury decision); Request for comments.

SUMMARY: This interim final rule implements the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, with respect to the civil penalty provision of the Alcoholic Beverage Labeling Act of 1988 (ABLA). Specifically, this interim final rule increases the maximum civil monetary penalty for violations of the provisions of the ABLA from $10,000 to $19,787, in accordance with Federal law.

DATES: The effective date of this interim final rule is July 1, 2016. Comments on this interim final rule must be received by August 30, 2016.

ADDRESSES: Please send your comments on the interim final rule to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2016–0006 at *Regulations.gov,* the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments.

FOR FURTHER INFORMATION CONTACT: Andrew L. Malone, Public Guidance Program Manager, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; (202) 453–1039, ext. 188.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A "civil monetary penalty" is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Debt Collection Improvement Act of 1996 (the Improvement Act of 1996), Public Law 104–134, section 31001(s), 110 Stat. 1321, enacted on April 26, 1996, amended the Inflation Adjustment Act by requiring civil monetary penalties to be adjusted for inflation. Specifically, the Improvement Act of 1996 required, among other things, that the head of each Federal agency adjust each civil monetary penalty provided by law within the jurisdiction of the respective agency by the inflation adjustment described under section 5 of the Inflation Adjustment Act. The Improvement Act of 1996 required the adjustment of the civil monetary penalty to be done by regulation and published in the **Federal Register**.

Under the Improvement Act of 1996, any increase in a civil monetary penalty made pursuant to the amendment applied only to violations which occur after the date the increase takes effect. The act also provided that the first adjustment of a penalty made pursuant to the amendment may not exceed 10 percent of such penalty.

The Inflation Adjustment Act has been further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Improvements Act of 2015), Public Law 114–74, section 701, 129 Stat. 584, enacted on November 2, 2015. The Improvements Act of 2015 changed the method agencies use to calculate inflation adjustments to civil monetary penalties, as well as the method and frequency of future adjustments. The Improvements Act of 2015 also instructed agencies to apply its method of calculating the inflation adjustment to the original statutory penalty, rather than to penalties as they were adjusted under the Improvement Act of 1996. To account for inflation that took place between the enactment of the original penalties and the enactment of the Improvements Act of 2015, agencies must make a "catch-up" first adjustment through an interim final rulemaking that is published no later than July 1, 2016, and takes effect no later than August 1, 2016. Agencies shall adjust civil monetary penalties no later than January 15 of every year thereafter. The Improvements Act of 2015 also provides that any increase in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect.

As amended, the Inflation Adjustment Act provides that the inflation adjustment does not apply to civil monetary penalties under the Internal Revenue Code of 1986 or the Tariff Act of 1930.

Alcoholic Beverage Labeling Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the Federal Alcohol Administration Act (FAA Act) pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013, (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

The FAA Act contains the Alcoholic Beverage Labeling Act (ABLA) of 1988, Public Law 100–690, 27 U.S.C. 213–219a, which was enacted on November 18, 1988. Section 204 of the ABLA, codified in 27 U.S.C. 215, requires that a health warning statement appear on the labels of all containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States, as well as on containers of alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement requirement applies to containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States on or after November 18, 1989. The statement reads as follows:

> GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Section 204 of the ABLA also specifies that the Secretary of the Treasury shall have the power to ensure the enforcement of the provisions of the ABLA and issue regulations to carry out them out. In addition, section 207 of the ABLA, codified in 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense.

Most of the civil monetary penalties administered by TTB are imposed by the Internal Revenue Code of 1986, and thus are not subject to the inflation adjustment mandated by the Inflation Adjustment Act. The only civil monetary penalty enforced by TTB that is subject to the inflation adjustment is the penalty imposed by the ABLA at 27 U.S.C. 218.

Previous Civil Monetary Penalty Adjustment for Violations of the ABLA

In accordance with the Improvement Act of 1996, TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), issued a final rule that was published in the **Federal Register** and effective on October 23, 1996 (61 FR 54935, T.D. ATF–385), that adjusted the civil monetary penalty provision by increasing the maximum penalty for violations of the ABLA from $10,000 to $11,000.

The TTB regulations implementing the ABLA are found in 27 CFR part 16, Alcoholic Beverage Health Warning Statement. The 1996 final rule established a new section, 27 CFR 16.33, addressing the penalty provision. Specifically, paragraph (a) of § 16.33 codified the statutory $10,000 penalty set forth in the ABLA, and paragraph (b) addressed the Improvement Act of 1996 requirement, stating that the penalty provided for in paragraph (a) shall be periodically adjusted in accordance with inflation, with the civil penalty for violations occurring after October 23, 1996, not to exceed $11,000.

As noted earlier, the Improvements Act of 2015 changed the Inflation Adjustment Act's method of calculating the inflation adjustment and the method and frequency of future adjustments. Accordingly, this interim final rule revises § 16.33 to reflect the amendments to the Inflation Adjustment Act.

Cost-of-Living Adjustment

As mentioned earlier, the ABLA contains a maximum civil monetary penalty, rather than a range of minimum and maximum civil monetary penalties. For such penalties, the Inflation Adjustment Act, as amended, provides that the first adjustment will be determined by increasing the maximum civil monetary penalty by the cost-of-living adjustment. For the first adjustment after the date of enactment of the Improvements Act of 2015, the cost-of-living adjustment means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for all-urban consumers (CPI–U) for the month of October, 2015, exceeds the CPI–U for the month of October of the calendar year in which the amount of such civil penalty was last established or adjusted under a provision of law other than the Inflation Adjustment Act. This means that the inflation adjustment must be applied to the original statutory penalty (for the ABLA, $10,000), and not to any increases promulgated under the Inflation Adjustment Act, as amended by the Improvement Act of 1996. Any increase determined under section 5 of the Inflation Adjustment Act, as amended, must be rounded to the nearest multiple of $1.

The CPI–U in October 1988, the year in which the ABLA was enacted and its civil monetary penalty was established, was 120.2, and the CPI–U for October 2015 was 237.838. The rate of inflation for the period between October 1988 and October 2015 is therefore 97.8686 percent. When applied to the original ABLA civil monetary penalty of $10,000, this rate of inflation yields a raw (unrounded) inflation adjustment of $9,786.86. Rounded to the nearest dollar, the inflation adjustment is $9,787, meaning that the new maximum civil monetary penalty for violations of the ABLA will be $19,787.

The Inflation Adjustment Act, as amended, provides that the amount of increase in the initial adjustment of a civil monetary penalty shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of the Improvements Act of 2015; this penalty adjustment does not exceed the maximum. The Inflation Adjustment Act, as amended, also provides that, for the initial adjustment, an agency may adjust the amount of a civil monetary penalty by less than the otherwise required amount if the agency, after publishing a notice of proposed rulemaking and providing an opportunity for comment, determines that (1) increasing the civil monetary penalty by the otherwise required amount will have a negative economic impact or (2) the social costs of increasing the civil monetary penalty by the otherwise required amount outweigh the benefits. The Office of Management and Budget must concur with such a determination. However, TTB has determined that neither of these circumstances apply to the initial cost-of-living adjustment described above.

Notice of Future Increases

After the initial "catch-up" adjustment, section 4 of the Inflation Adjustment Act, as amended, requires heads of agencies to adjust civil monetary penalties and to make the adjustments notwithstanding section 553 of title 5, United States Code. Section 553 of title 5 is the rulemaking provision of the Administrative Procedure Act, which requires notice-and-comment rulemaking for certain agency actions and requires agencies to provide interested parties the right to petition for the issuance, amendment, or repeal of a rule.

Until the Improvements Act of 2015, the Inflation Adjustment Act required agencies to adjust their civil monetary penalties by regulation. For all adjustments after the initial adjustment via interim final rule, the amendments in the Improvements Act of 2015 allow agencies to apply the cost-of-living adjustment formula in the Inflation Adjustment Act and publish the resulting civil monetary penalty without establishing it by regulation. As the Inflation Adjustment Act, as amended, now requires annual cost-of-living adjustments, to be applied no later than January 15 of every year after 2016, TTB has determined that it is most expedient to publish the new penalty on its Web site, rather than in § 16.33. TTB will announce future adjustments to the maximum civil monetary penalty in the ABLA through notices published in the **Federal Register** and update its Web site when adjustments are announced.

TTB Determination

Accordingly, this interim final rule revises § 16.33 to reflect the changes to the Inflation Adjustment Act made by the Improvements Act of 2015. Paragraph (a) of § 16.33 states that the ABLA provides that any person who violates the provisions of 27 CFR part 16 shall be subject to a civil penalty of not more than $10,000. However, pursuant to the provisions of the Inflation Adjustment Act, as amended, the civil penalty provided in the ABLA is subject to periodic cost-of-living adjustment. Accordingly, any person who violates the provisions of 27 CFR part 16 shall be subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/regulation_guidance/ablapenalty.html.* Paragraph (a) also states that each day shall constitute a separate offense.

Paragraph (b) of the revised § 16.33 indicates that TTB will provide notice in the **Federal Register** and at the Web site above of cost-of-living adjustments to the civil penalty for violations of 27 CFR part 16.

Paragraph (c) of the revised § 16.33 reflects the changes the Improvements Act of 2015 made with respect to the applicability of adjusted penalties. As mentioned earlier, before the Improvements Act of 2015, an adjusted penalty only applied to violations that occurred after the date the increase took effect; this language had been reflected in the previous § 16.33(b). Consistent with section 6 of the Inflation Adjustment Act, as amended, new paragraph (c) states that any increase in the penalty described in paragraph (a) shall apply only to penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect. An increase will take effect on the date a notice is published in the **Federal Register** announcing the increase. The effective date of the increase also will be listed at the Web site mentioned above.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on the cost-of-living adjustment to the ABLA civil monetary penalty.

Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2016–0006 on "*Regulations.gov,*" the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under T.D. TTB–138 on the TTB Web site at *http://www.ttb.gov/rrd/decisions.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the "Help" tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference T.D. TTB–138 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this interim final rule, selected supporting materials, and any online or mailed comments received about this interim final rule within Docket No. TTB–2016–0006 on the Federal e-rulemaking portal, *Regulations.gov*, at *http://www.regulations.gov*. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/rrd/decisions.shtml* under T.D. TTB–138. You may also reach the relevant docket through the *Regulations.gov* search page at *http://www.regulations.gov*. For information on how to use *Regulations.gov*, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this interim final rule and any electronic or mailed comments that TTB receives about this interim final rule by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Administrative Procedure Act

TTB is issuing this interim final rule without prior notice and opportunity for public comment in accordance with provisions of the Improvements Act of 2015, which directs agencies to make the "catch-up" adjustment through interim final rulemaking. In addition, TTB finds good cause under 5 U.S.C. 553(d)(3) to dispense with the effective date limitation in 5 U.S.C. 553(d) because this interim final rule merely implements the provisions of the Inflation Adjustment Act, as amended, and does not change TTB's interpretation of any regulation or the requirements of any recordkeeping provision.

Regulatory Flexibility Act

Because the agency was not required to publish a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this interim final rule. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this interim final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Andrew L. Malone of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 16

Alcohol and alcoholic beverages, Consumer protection, Health, Labeling, Penalties.

Amendment to the Regulations

For the reasons set forth in the preamble, TTB is amending 27 CFR, chapter I, part 16 as follows:

PART 16—Alcoholic Beverage Health Warning Statement

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

■ 2. Section 16.33 is revised to read as follows:

§ 16.33 Civil penalties; adjustments.

(a) *General.* The Act provides that any person who violates the provisions of this part shall be subject to a civil penalty of not more than $10,000. However, pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this civil penalty is subject to periodic cost-of-living adjustment. Accordingly, any person who violates the provisions of this part shall be subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/regulation_guidance/ablapenalty.html*. Each day shall constitute a separate offense.

(b) *Notice of cost-of-living adjustment.* TTB will provide notice in the **Federal Register** and at the Web site referenced in paragraph (a) of this section of cost-of-living adjustments to the civil penalty for violations of this part.

(c) *Applicability of increases in penalty.* Any increase in the penalty described in paragraph (a) of this section shall apply only to penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect. An increase will take effect on the date a notice is published in the **Federal Register** announcing the increase. The effective date of the increase also will be listed at the Web site in paragraph (a) of this section.

Dated: May 16, 2016.

Mary G. Ryan,

Acting Administrator.

Approved: May 27, 2016.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–15636 Filed 6–30–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 3691–2016]

Office for Access to Justice

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Code of Federal Regulations to reflect the establishment of the Office for Access to Justice as a distinct component of the Department of Justice. The Office for Access to Justice was created by the Attorney General to address the access-to-justice crisis in the criminal and civil justice systems. The office's mission is to help ensure that the justice system is efficient, fair, and accessible to all, irrespective of an individual's wealth and status. This rule sets forth the Office's organization, mission and functions.

DATES: This rule is effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Lisa Foster, Director, Office for Access to Justice, U.S. Department of Justice, RFK Main Justice Building, Room 3340, 950 Pennsylvania Avenue NW., Washington, DC 20530. Telephone: (202) 514–5312.

SUPPLEMENTARY INFORMATION:

Background

In 2010, the Attorney General established the Office for Access to Justice to address the access-to-justice crisis in the criminal and civil justice systems. The office's mission is to help ensure that the justice system is efficient, fair, and accessible to all, irrespective of an individual's wealth and status. Its staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice system for people who are unable to afford lawyers. This rule reflects the establishment of the Office for Access to Justice as a distinct component of the Department of Justice, and sets forth the office's organization, mission, and functions.

Administrative Procedure Act

This rule is a rule of agency organization and procedure, and relates to the internal management of the Department of Justice. It is therefore exempt from the requirements of notice and comment and a delayed effective date. 5 U.S.C. 553(b), (d).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 604(a).

Executive Orders 12866 and 13563: Regulatory Review

This action has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulations and Regulatory Review," section 1(b), General Principles of Regulation. This action is limited to agency organization, management, and personnel matters and therefore is not a "regulation" or "rule" under Executive Order 12866. *Id.* § 3(d)(3). Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1955

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it does not establish requirements that might significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). *See* 5 U.S.C. 804(3). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Plain Language Instructions

We try to write clearly. Suggestions about how to improve the clarity of this rule may be submitted in writing to Lisa Foster, Director, Office for Access to Justice.

List of Subjects in 28 CFR Part 0

Authority delegation (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.1, under the heading "Offices", add the title "Office for Access to Justice" to the end of the list.

■ 3. Add Subpart F–1 to read as follows:

Subpart F–1—Office for Access to Justice

§ 0.33 Office for Access to Justice.

The Office for Access to Justice shall be headed by a Director appointed by the Attorney General. The principal responsibilities of the Office shall be to plan, develop, and coordinate the implementation of access to justice policy initiatives of high priority to the Department and the executive branch, including in the areas of criminal indigent defense and civil legal aid. In addition, the Director shall:

(a) Promote uniformity of Department of Justice and government-wide policies and litigation positions relating to equal access to justice;

(b) Examine proposed legislation, proposed rules, and other policy proposals to ensure that access to justice principles are properly considered in the development of policy; and

(c) Perform such other duties and functions as may be authorized by law or directed by the Attorney General, Deputy Attorney General, or Associate Attorney General.

Dated: June 24, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–15574 Filed 6–30–16; 8:45 am]

BILLING CODE 4410–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2016–0055; MMAA104000]

RIN 1010–AD95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Civil Penalties Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Interim final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations pursuant to the Outer Continental Shelf Lands Act, the Oil Pollution Act of 1990, the Federal Civil Penalties Inflation Adjustment Act Improvements

Act of 2015 and Office of Management and Budget guidance.

DATES: This rule is effective on August 1, 2016. Comments will be accepted until August 30, 2016.

ADDRESSES: Address all comments regarding this proposed rule to BOEM by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. Postal Service or Other Mail Delivery Service:* Address to Robert Sebastian, Office of Policy, Regulation and Analysis (OPRA), BOEM, Department of the Interior, 1849 C Street NW., Mailstop 5238, Washington, DC 20240.
- Hand delivery to Office of Policy, Regulation and Analysis, BOEM, Department of the Interior, at 1849 C Street NW., Room 5249, Washington, DC 20240.

Please include your name, return address, and phone number and/or email address, so we can contact you if we have questions regarding your submission.

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, Office of Policy, Regulation and Analysis at (504) 736–2761 or email at *robert.sebastian@boem.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Calculation of Adjustments
III. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866 and 13563)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)
  L. Clarity of this Regulation
  M. Administrative Procedure Act

I. Background

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation. 43 U.S.C. 1350(b)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 104–410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every four years. Pursuant to OCSLA and the FCPIA of 1990, the OCSLA maximum civil penalty amount was last adjusted in 2011. 76 FR 38,294 (June 30, 2011). After running the computations, the Department of the Interior determined that adjustments of the OCSLA maximum civil penalty amount were not warranted in 2014 and 2015.

Similarly, the Oil Pollution Act (OPA) of 1990 authorizes the Secretary of the Interior to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. The FCPIA of 1990 required that all civil monetary penalties, including the OPA maximum civil penalty amount, be adjusted at least once every four years. Pursuant to the FCPIA of 1990, the OPA maximum civil penalty amount was adjusted for the first time in 2007, 72 FR 8,897 (Feb. 28, 2007), and again in 2011, 76 FR 38,294 (June 30, 2011). After running the computations, the Department of the Interior determined that adjustments of the OPA maximum civil penalty amount were not warranted in 2014 and 2015.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114–74) (FCPIA of 2015), which further amended the FCPIA of 1990. The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment, if warranted, through rulemaking, and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Pursuant to OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 550.1403	Failure to comply with regulatory and contractual obligations.	$40,000	1.05042	$42,017
30 CFR 553.51(a)	Failure to comply with financial responsibility requirements.	*25,000	1.78156	44,539

*The current OPA maximum civil penalty amount provided in 30 CFR 553.51(a) is $30,000. However, the FCPIA of 2015 instructs BOEM to use the OPA maximum civil penalty amount as last adjusted by a provision of law other than the FCPIA of 1990 when calculating the 2016 civil penalty adjustment. Therefore, BOEM used the OPA maximum civil penalty amount of $25,000, which was established by OPA in 1990, when calculating the 2016 civil penalty adjustment.

II. Calculation of Adjustments

The Office of Management and Budget (OMB) issued guidance on calculating the civil monetary penalty adjustments pursuant to the FCPIA of 2015. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, subject: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* Under this guidance, the Department of the Interior has identified applicable civil monetary penalties and calculated the necessary adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated adjustment for 2016 is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the calendar year of the previous adjustment (or in the year of establishment, if subsequent adjustments were made pursuant to the FCPIA of 1990) and the October 2015 CPI–U.

For 2016, OCSLA and the FCPIA of 2015 require that BOEM adjust the OCSLA maximum civil penalty amount and provide the adjustment timing. In computing the new OCSLA maximum civil penalty amount, since the amount was last adjusted in 2011, BOEM divided the October 2015 CPI–U by the

October 2011 CPI–U (237.838/226.421). This resulted in a multiplying factor of 1.05042. The existing OCSLA maximum civil penalty amount ($40,000) was multiplied by the multiplying factor (40,000 × 1.05042 = 42,016.80). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is $42,017. This increase in the OCSLA maximum civil penalty amount does not exceed 150 percent of the OCSLA maximum civil penalty amount as of November 2, 2015, and thus complies with the FCPIA of 2015. Also, pursuant to the FCPIA of 2015, the increase in the OCSLA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predates such increase.

For 2016, the FCPIA of 2015 requires that BOEM adjust the OPA maximum civil penalty amount and provides the adjustment timing. The OPA maximum civil penalty amount was last adjusted pursuant to the FPCIA of 1990 in 2011 ($30,000). However, the FCPIA of 2015 instructs BOEM to use the OPA maximum civil penalty amount as last adjusted by a provision of law other than the FCPIA of 1990 when calculating the 2016 civil penalty adjustment. The OPA maximum civil penalty was last adjusted by a provision of law other than the FCPIA of 1990 when it was established by OPA in 1990. Therefore, in computing the new OPA maximum civil penalty amount, BOEM divided the October 2015 CPI–U by the October 1990 CPI–U (237.838/133.5). This resulted in a multiplying factor of 1.78156. The statutory OPA maximum civil penalty amount ($25,000) was multiplied by the multiplying factor (25,000 × 1.78156 = 44,539.00). The FCPIA of 2015 requires that the OPA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum civil penalty is $44,539. This increase in the OPA maximum civil penalty amount does not exceed 150 percent of the OPA maximum civil penalty amount as of November 2, 2015, and thus complies with the FCPIA of 2015. Also, pursuant to the FCPIA of 2015, the increase in the OPA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predates such increase.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (see 43 CFR 46.210(i).). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. Your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The FCPIA of 2015 requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties of no later than August 1, 2016. To comply with the FCPIA of 2015, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. The Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for prior public comment. 5 U.S.C. 553(b). BOEM finds that there is good cause to promulgate this rule without first providing for public comment. It would not be practicable to meet the deadlines imposed by the FCPIA of 2015 if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, BOEM is promulgating this final rule to implement the statutory directive in the FCPIA of 2015, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying a specified formula. BOEM has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters, so notice and comment is unnecessary. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule. Thus, BOEM finds pre-promulgation notice and public comment to be impracticable and unnecessary.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, environmental impact statements, environmental protection, federal lands, government contracts, investigations, oil and gas exploration, outer continental shelf, penalties, pipelines, mineral resources, rights-of-way, reporting and recordkeeping requirements, sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, OCS, Oil and gas exploration, Oil pollution, Liability, Limit of liability, Penalties, Pipelines, Rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Treasury securities.

Dated: June 24, 2016.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the BOEM amends 30 CFR parts 550 and 553 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 is revised to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is $42,017 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. The authority citation for part 553 is revised to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

■ 4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $44,539 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2016–15607 Filed 6–30–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is making non-substantive technical corrections to its marketable securities auction rules.

DATES: Effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kurt Eidemiller, or Kevin

Hawkins, Government Securities Regulations Staff, Bureau of the Fiscal Service, Department of the Treasury, (202) 504–3632 or email us at *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: We are making non-substantive technical corrections to §§ 356.2, 356.31, and appendix B to part 356. The amendments re-designate cross references to other parts of the rules, revise the introductory text of a paragraph, and restate a variable.

Procedural Requirements

Administrative Procedure Act. Because this final rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

List of Subjects in 31 CFR Part 356

Banks, banking, Bonds, Federal Reserve System, Government securities, Reporting and recordkeeping requirements, Securities.

Text of Amendments

Accordingly, 31 CFR part 356 is amended by making the following technical amendments:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, FISCAL SERVICE SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

§ 356.2 [Amended]

■ 2. Section 356.2 is amended in the last sentence of the definition of "accrued interest" by removing the reference to "paragraph C" and adding in its place "paragraph D" and in the last sentence of paragraph (2) in the definition of "adjusted value" by removing the reference to "section IV" and adding in its place "section V."

§ 356.31 [Amended]

■ 3. Section 356.31 is amended in the last sentences of paragraphs (c)(3)(i) and (iii) by removing the reference to "section IV" and adding in its place "section V."

■ 4. Appendix B to part 356 is amended by removing two paragraphs of introductory text following the table of contents and adding one paragraph in its place, and revising Section IV, subsection D, paragraphs (a), (b), and (c) to read as follows:

Appendix B to Part 356—Formulas and Tables

* * * * *

The examples in this appendix are given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this part. In some of the following examples, we use intermediate rounding for ease in following the calculations.

* * * * *

IV. * * *

D. * * *

(a) If it is a new floating rate note, then $IP_i = 100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r+s,0)$

(b) If it is a reopened floating rate note, and the interest payment is the first one after the reopening, then $IP_i = 100 \times \frac{1}{360}\sum_{j=T_{-1}}^{T_0-1} \max\left(r_j + s, 0\right) + 100 \times \frac{1}{360}\left(T_1 - T_0\right) \times \max(r+s,0)$

(c) If it is a reopened floating rate note, and the interest payment is not the first one after the reopening, then $IP_i = 100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r+s,0)$

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2016–15248 Filed 6–30–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 535, 536, 537, 538, 539, 541, 542, 543, 544, 546, 547, 548, 549, 560, 561, 566, 576, 588, 592, 593, 594, 595, 597, and 598.

Implementation of the Federal Civil Penalties Inflation Adjustment Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this interim final rule to amend its regulations for the relevant sanctions programs it administers to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. In particular, this rule adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under relevant OFAC regulations, including by making conforming changes to OFAC's "Economic Sanctions Enforcement Guidelines."

DATES: This rule is effective August 1, 2016. Comments must be received on or before August 1, 2016.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the Web site for submitting comments.

Fax: Attn: Request for Comments (Amendments to OFAC Regulations to Implement the Federal Civil Penalties Inflation Adjustment Act) 202–622–1657.

Mail: Attn: Request for Comments (Amendments to OFAC Regulations to Implement the Federal Civil Penalties Inflation Adjustment Act), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Enforcement, tel.: 202–622–2430; Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*).

Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (collectively, the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

The FCPIA Act directs agencies to adjust the level of CMPs for inflation annually, with an initial "catch up" adjustment effective no later than August 1, 2016. Catch-up adjustments will be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the last non-FCPIA-Act-based adjustment and the October 2015 CPI–U. In accordance with the FCPIA Act, however, the amount of the CMP catch-up adjustment shall not exceed 150 percent of the corresponding level in effect on November 2, 2015 (the "maximum adjustment"). Annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of the adjustment and the prior year's October CPI–U. The FCPIA Act requires agencies to round all CMP levels to the nearest dollar after applying the multiplier.

In order to complete the catch-up adjustment, the FCPIA Act directs agencies to use as a starting point for each CMP the year and corresponding amount(s) for which the maximum CMP level or range of minimum and maximum CMPs was established or last adjusted, whichever is later, other than pursuant to the FCPIA Act. The catch-up calculations therefore exclude prior inflationary adjustments under the FCPIA Act.

On February 24, 2016, the Office of Management and Budget issued written guidance providing agencies with CPI–U related multipliers to use when adjusting the CMP level or range of CMP levels based on the year the CMP was established or last adjusted by statute or regulation. (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Guidance)).

The adjusted civil penalty amounts described in this rule are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the *Federal Civil Penalties Inflation Adjustment Act Improvements Act.* Therefore, violations occurring on or before November 2, 2015, and assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in OFAC's existing regulations.

OFAC currently is authorized to impose CMPs pursuant to five statutes: the Trading With the Enemy Act (50 U.S.C. 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132, 110 Stat. 1250; 18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (Pub. L. 106–120, 113 Stat. 1632; 21 U.S.C. 1901–1908) (FNKDA); and the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631; 19 U.S.C. 3901–3913) (CDTA). The maximum CMPs under the statutes were last adjusted or set by statute as follows: TWEA in 1992; IEEPA in 2007; AEDPA in 1996; FNKDA in 1999, and CDTA in 2003.

TWEA. The maximum TWEA-based CMP was established at $50,000 in 1992 by the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484, 106 Stat. 2315, 50 U.S.C. 4315). Although there were two subsequent adjustments, bringing the current maximum CMP to $65,000, those adjustments were made pursuant to the FCPIA Act and therefore will not be considered for purposes of determining the new maximum CMP. Pursuant to the OMB Guidance, the relevant inflation factor is 1.67728. Multiplying the CMP amount of $50,000 by the inflation factor of 1.67728 and rounding to the nearest dollar results in $83,864. This would be an increase of $33,864. Pursuant to the FCPIA Act, the maximum adjustment amount is 150% of $65,000 (the CMP in effect on November 2, 2015), or $97,500. The increase does not exceed the maximum adjustment. Therefore, the maximum TWEA-based CMP effective August 1, 2016 is increased to the inflation-adjusted amount of $83,864 per violation.

IEEPA. The maximum IEEPA-based CMP of the greater of $250,000 or twice the amount of the underlying transaction was set in 2007 by the International Emergency Economic Powers Enhancement Act (Pub. L. 110–96, 121 Stat. 1011; 50 U.S.C. 1705 note). Pursuant to the OMB Guidance, the relevant inflation factor is 1.13833. Multiplying the current penalty amount of $250,000 by the inflation factor of 1.13833 and rounding to the nearest dollar amount results in a maximum penalty amount of the greater of $284,582 or twice the amount of the underlying transaction per violation. This would be an increase of $34,582. Pursuant to the FCPIA Act, the maximum adjustment is 150% of $250,000 (the CMP in effect on November 2, 2015), or $375,000. The increase does not exceed the maximum adjustment. Therefore, the maximum IEEPA CMP effective August 1, 2016 is increased to the inflation-adjusted amount of $284,582 or twice the amount of the underlying transaction per violation. The FCPIA Act applies only to CMPs that are for a specific monetary amount as provided by Federal law. Accordingly, the alternative IEEPA CMP of twice the amount of the underlying transaction remains unchanged.

AEDPA. The maximum AEDPA-based CMP of the greater of $50,000 or twice the amount of which a financial institution was required to retain possession or control was set by statute in 1996 (Pub. L. 104–132, 110 Stat.

1250; 18 U.S.C. 2339B). Although there was one subsequent adjustment, bringing the current maximum CMP to $55,000, that adjustment was made pursuant to the FCPIA Act and therefore will not be considered in the new maximum CMP calculation. Pursuant to the OMB Guidance, the relevant inflation factor is 1.50245. Multiplying the CMP amount of $50,000 by the inflation factor of 1.50245 and rounding to the nearest dollar results in $75,122. This would be an increase of $20,122. Pursuant to the FCPIA Act, the maximum adjustment is 150% of $55,000 (the CMP in effect on November 2, 2015), or $82,500. The increase does not exceed the maximum adjustment. Therefore, the maximum AEDPA-based CMP per violation effective August 1, 2016 is increased to the inflation-adjusted amount of the greater of $75,122 or twice the amount of which a financial institution was required to retain possession or control. The FCPIA Act applies only to CMPs that are for a specific monetary amount as provided by Federal law. Accordingly, the alternative AEDPA CMP of twice the amount of which a financial institution was required to retain possession or control remains unchanged.

FNKDA. The maximum FNKDA-based CMP of $1,000,000 was set in 1999 by the Intelligence Authorization Act for Fiscal Year 2000 (Pub. L. 106–120, 113 Stat. 1632; 21 U.S.C. 1901–1908). Although there was one subsequent adjustment, bringing the current maximum CMP to $1,075,000, that adjustment was made pursuant to the FCPIA Act and therefore will not be considered in the new maximum CMP calculation. Pursuant to OMB Guidance, the relevant inflation factor is 1.41402. Multiplying the CMP of $1,000,000 by the inflation factor of 1.41402 and rounding to the nearest dollar results in $1,414,020. This would be an increase of $414,020. Pursuant to the FCPIA Act, the maximum adjustment is 150% of $1,075,000 (the CMP in effect on November 2, 2015), or $1,612,500. The increase does not exceed the maximum adjustment. Therefore, as of August 1, 2016, the maximum FNKDA-based CMP is increased to the inflation-adjusted amount of $1,414,020 per violation.

CDTA. The maximum CDTA-based CMP of $10,000 was set by statute in 2003. (Pub. L. 108–19, 117 Stat. 631; 19 U.S.C. 3901–3913). Pursuant to the OMB Guidance, the relevant inflation factor is 1.28561. Multiplying the current penalty of $10,000 by the inflation factor of 1.28561 and rounding to the nearest dollar results in $12,856. This would be an increase of $2,856. Pursuant to the FCPIA Act, the maximum adjustment is 150% of $10,000 (the CMP in effect on November 2, 2015), or $15,000. The increase does not exceed the maximum adjustment. Therefore, the maximum CDTA-based CMP effective August 1, 2016 is increased to the inflation-adjusted amount of $12,856 per violation.

The table below summarizes the changes to the penalty amounts:

Statute	Existing penalty amount	Penalty amount effective August 1, 2016
TWEA	$65,000	$83,864.
IEEPA	The greater of $250,000 or twice the amount of the underlying transaction.	The greater of $284,582 or twice the amount of the underlying transaction.
AEDPA	The greater of $55,000 or twice the amount of which a financial institution was required to retain possession or control.	The greater of $75,122 or twice the amount of which a financial institution was required to retain possession or control.
FNKDA	$1,075,000	$1,414,020.
CDTA	$10,000	$12,856.

The regulations for many of the sanctions programs administered by OFAC, as well as the Reporting, Procedures and Penalties Regulations and the Economic Sanctions Enforcement Guidelines appended thereto, contain references to the current penalty amounts. This interim final rule revises the relevant parts of 31 CFR chapter V to update these amounts. The authority sections of the relevant parts are not being amended at this time.

This interim final rule also makes certain technical and conforming changes to the Enforcement Guidelines. For example, OFAC is removing one of the examples of a blocked transaction appearing at 31 CFR 501.604(b) because it refers to conduct that is no longer prohibited following the issuance of Executive Order 13350 of July 29, 2004.

Effective Date

The FCPIA Act requires agencies to make adjustments for inflation to CMPs and to provide new CMPs through an interim final rulemaking to be published by July 1, 2016. The FCPIA Act further provides that the adjustments for inflation shall take effect no later than August 1, 2016.

Procedural Requirements

Notice and Comment

As required by the FCPIA Act, these amendments are being published as an interim final rule with an effective date of August 1, 2016. Although other notice and comment procedures are not required, OFAC invites comments on this notice.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 31 CFR Parts 501, 535, 536, 537, 538, 539, 541, 542, 543, 544, 546, 547, 548, 549, 560, 561, 566, 576, 588, 592, 593, 594, 595, 597, and 598

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

Subpart C—Reports

§ 501.604 [Amended]

■ 2. Amend § 501.604 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (5) as paragraphs (b)(2) through (4), respectively.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

■ 3. Amend § 501.701 by adding a note to paragraph (a)(1) and revising paragraph (a)(3) to read as follows:

§ 501.701 Penalties.

(a) * * *

(1) * * *

Note 1 to paragraph (a)(1): As of August 1, 2016, TWEA provides for a maximum civil penalty not to exceed $83,864.

* * * * *

(3) The Secretary of the Treasury may impose a civil penalty of not more than $83,864 per violation on any person who violates any license, order, or regulation issued under TWEA.

Note to paragraph (a)(3): The current civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

* * * * *

■ 4. Amend appendix A to part 501 by revising section V.B.2.a to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines

* * * * *

V. Civil Penalties

* * * * *

B. * * *

2. * * *

a. Base Category Calculation

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the transaction value, capped at a maximum base amount of $142,291 per violation, except where the statutory maximum penalty applicable to the apparent violation is less than $284,582, in which case the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be capped at one-half the statutory maximum penalty applicable to the apparent violation.

ii. In a non-egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the "applicable schedule amount," as defined above. For apparent violations where the statutory maximum penalty applicable to the apparent violation is $284,582 or greater, the maximum base amount shall be capped at $284,582. For apparent violations where the statutory maximum penalty applicable to the apparent violation is less than $284,582, the maximum base amount shall be capped at the statutory maximum penalty amount applicable to the apparent violation.

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by a Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the applicable statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the applicable statutory maximum penalty amount applicable to the violation.

Note to paragraph (a): As of August 1, 2016, the applicable statutory maximum civil penalty per violation for each statute enforced by OFAC is as follows: International Emergency Economic Powers Act (IEEPA)—greater of $284,582 or twice the amount of the underlying transaction; Trading with the Enemy Act (TWEA)—$83,864; Foreign Narcotics Kingpin Designation Act (FNKDA)—$1,414,020; Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)—greater of $75,122 or twice the amount of which a financial institution was required to retain possession or control; and Clean Diamond Trade Act (CDTA)—$12,856. The civil penalty amounts authorized under these statutes are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

The following matrix represents the base amount of the proposed civil penalty for each category of violation:

BASE PENALTY MATRIX

		Egregious Case	
		NO	YES
Voluntary Self-Disclosure	YES	(1) One-Half of Transaction Value (capped at lesser of $142,291 or one-half of the applicable statutory maximum per violation)	(3) One-Half of Applicable Statutory Maximum
	NO	(2) Applicable Schedule Amount (capped at lesser of $284,582 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

* * * * *

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 5. The authority citation for part 535 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Subpart G—Penalties.

■ 6. Revise the note to paragraph (a)(1) of § 535.701 to read as follows:

§ 535.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 7. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart G—Penalties

■ 8. Revise the note to paragraph (a)(1) of § 536.701 to read as follows:

§ 536.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 537—BURMESE SANCTIONS REGULATIONS

■ 9. The authority citation for part 537 continues read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 570, Pub. L. 104–208, 110 Stat. 3009; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1701 note); Pub. L. 110–286, 122 Stat. 2632 (50 U.S.C. 1701 note); E.O. 13047, 62 FR 28301, 3 CFR, 1997 Comp., p. 202; E.O. 13310, 68 FR 44853, 3 CFR, 2003 Comp., p. 241; E.O. 13448, 72 FR 60223, 3 CFR, 2007 Comp., p. 304; E.O. 13464, 73 FR 24491, 3 CFR, 2008 Comp., p. 189; E.O. 13619, 77 FR 41243, 3 CFR, 2012 Comp., p. 279; E.O. 13651, 78 FR 48793 (August 9, 2013); Determination No. 2009–11, 74 FR 3957, 3 CFR, 2009 Comp., p. 330.

Subpart G—Penalties

■ 10. Revise the note to paragraph (a)(1) of § 537.701 to read as follows:

§ 537.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 11. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart G—Penalties

■ 12. Revise the note to paragraph (a)(1) of § 538.701 to read as follows:

§ 538.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 13. The authority citation for part 539 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200.

Subpart G—Penalties

■ 14. Revise the note to paragraph (a)(1) of § 539.701 to read as follows:

§ 539.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 15. The authority citation for part 541 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201, 3 CFR, 2005 Comp., p. 206; E.O. 13469, 73 FR 43841, 3 CFR, 2008 Comp., p. 1025.

Subpart G—Penalties

■ 16. Revise the note to paragraph (a)(1) of § 541.701 to read as follows:

§ 541.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 17. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–

96, 121 Stat. 1011 (50 U.S.C. 1701 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

Subpart G—Penalties

■ 18. Revise the note to paragraph (a)(1) of § 542.701 to read as follows:

§ 542.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 543—COTE D'IVOIRE SANCTIONS REGULATIONS

■ 19. The authority citation for part 543 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13396, 71 FR 7389, 3 CFR, 2006 Comp., p. 209.

Subpart G—Penalties

■ 20. Revise the note to paragraph (a)(1) of § 543.701 to read as follows:

§ 543.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 21. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart G—Penalties

■ 22. Revise the note to paragraph (a)(1) of § 544.701 to read as follows:

§ 544.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 546—DARFUR SANCTIONS REGULATIONS

■ 23. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart G—Penalties

■ 24. Revise the note to paragraph (a)(1) of § 546.701 to read as follows:

§ 546.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 25. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247.

Subpart G—Penalties

■ 26. Revise the note to paragraph (a)(1) of § 547.701 to read as follows:

§ 547.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 548—BELARUS SANCTIONS REGULATIONS

■ 27. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

Subpart G—Penalties

■ 28. Revise the note to paragraph (a)(1) of § 548.701 to read as follows:

§ 548.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 549—LEBANON SANCTIONS REGULATIONS

■ 29. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart G—Penalties

■ 30. Revise the note to paragraph (a)(1) of § 549.701 to read as follows:

§ 549.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 31. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Public Law 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Public Law 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Public Law 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13628, 77 FR 62139, 3 CFR, 2012 Comp., p. 314.

Subpart G—Penalties

■ 32. Revise the note to paragraph (a)(1) of § 560.701 to read as follows:

§ 560.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 33. The authority citation for part 561 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Pub. L. 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, February 8, 2012; E.O. 13622, 77 FR 45897, August 2, 2012; E.O. 13628, 77 FR 62139, October 12, 2012.

Subpart G—Penalties

■ 34. Revise the note to paragraph (a) of § 561.701 to read as follows:

§ 561.701 Penalties.

(a) * * *

Note to paragraph (a): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 566—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

■ 35. The authority citation for part 566 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 114–102.

Subpart G—Penalties

■ 36. Revise the note to paragraph (a) of § 566.701 to read as follows:

§ 566.701 Penalties.

(a) * * *

Note to paragraph (a): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 37. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 110–96, 121 Stat. 1011; E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224.

Subpart G—Penalties

■ 38. Revise the note to paragraph (a)(1) of § 576.701 to read as follows:

§ 576.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 39. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

Subpart G—Penalties

■ 40. Revise the note to paragraph (a)(1) of § 588.701 to read as follows:

§ 588.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

■ 41. The authority citation for part 592 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901–3913); E.O. 13312, 68 FR 45151 3 CFR, 2003 Comp., p. 246.

Subpart F—Penalties

■ 42. Amend § 592.601 by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 592.601 Penalties.

(a) Section 8 of the Clean Diamond Trade Act (the Act) (Pub. L. 108–19, 117 Stat. 631, 19 U.S.C. 3901–3913) provides that:

(1) A civil penalty not to exceed the amount set forth in section 8 of the Act may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act;

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is $12,856.

* * * * *

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in the Act are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

* * * * *

PART 593—FORMER LIBERIAN REGIME OF CHARLES TAYLOR SANCTIONS REGULATIONS

■ 43. The authority citation for part 593 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat.

1011; E.O. 13348, 69 FR 44885, 3 CFR, 2004 Comp., p. 189.

Subpart G—Penalties

■ 44. Revise the note to paragraph (a)(1) of § 593.701 to read as follows:

§ 593.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of IEEPA is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 45. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159.

Subpart G—Penalties

■ 46. Revise the note to paragraph (a)(1) of § 594.701 to read as follows:

§ 594.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 47. The authority citation for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159.

Subpart G—Penalties

■ 48. Revise the note to paragraph (a)(1) of § 595.701 to read as follows:

§ 595.701 Penalties.

(a) * * *

(1) * * *

Note to paragraph (a)(1): As of August 1, 2016, the applicable maximum civil penalty per violation of the Act is the greater of $284,582 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

* * * * *

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 49. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart G—Penalties

■ 50. Revise paragraph (b) of § 597.701 to read as follows:

§ 597.701 Penalties.

* * * * *

(b)(1) Pursuant to 18 U.S.C. 2339B(b), except as authorized by the Secretary of the Treasury, any financial institution that knowingly fails to retain possession of or maintain control over funds in which a foreign terrorist organization or its agent has an interest, or to report the existence of such funds in accordance with these regulations, shall be subject to a civil penalty in an amount that is the greater of the amount set forth in 18 U.S.C. 2339B(b) per violation, or twice the amount of which the financial institution was required to retain possession or control.

(2) The civil penalties provided in 18 U.S.C. 2339B(b) are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

Note to paragraph (b): As of August 1, 2016, the applicable maximum civil penalty per violation is $75,122 or twice the amount of which a financial institution was required to retain possession or control.

* * * * *

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 51. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

Subpart G—Penalties.

■ 52. Amend § 598.701 by revising paragraphs (a)(3) and (b) to read as follows:

§ 598.701 Penalties.

(a) * * *

(3) A civil penalty not to exceed the amount set forth in section 807 of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908) per violation may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of the Foreign Narcotics Kingpin Designation Act.

Note to paragraph (a)(3): As of August 1, 2016, the maximum civil penalty is $1,414,020 per violation.

(b) *Adjustments to penalty amounts.* (1) The current civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in this part are subject to increase pursuant to 18 U.S.C. 3571.

* * * * *

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–15552 Filed 6–30–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that certain vessels of the VIRGINIA SSN Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as a naval ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 1, 2016 and is applicable beginning June 21, 2016.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that certain vessels of the SSN Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with their special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the vertical placement of the masthead light; Annex I, paragraph 2(f)(i), pertaining to VIRGINIA class submarine masthead light location below the submarine identification lights; Annex I, paragraph 2(k), pertaining to the vertical separation of the anchor lights and vertical placement of the forward anchor light above the hull; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect these vessel's ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table One, adding, in alpha numerical order, by vessel number, the following entries for the SSN class;

■ b. In Table Three, adding, in alpha numerical order, by vessel number, the following entries for the SSN class;

■ c. In Table Four, paragraph 25, by adding, in alpha numerical order, by vessel number, the following entries for the SSN class; and

■ d. In Table Four, paragraph 26, by adding, in alpha numerical order, by vessel number, the following entries for the SSN class.

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * * * * * *		
USS Illinois	SSN 786	2.76
USS Washington	SSN 787	2.76
* * * * * * *		

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters 3(b) nnex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
* * * * * * *								
USS Illinois.	SSN 786	....	....	205.0°	4.37	11.05	2.8	0.30 below.
USS Washington.	SSN 787	....	....	206.8°	4.37	11.05	2.8	0.30 below.
* * * * * * *								

* * * * *

25. * * *

TABLE FOUR

Vessel	Number	Distance in meters of masthead light below the submarine identification lights
* * *	* * *	*
USS Illinois	SSN 786	0.81
USS Washington	SSN 787	0.81

26. * * *

TABLE FOUR

Vessel	Number	Obstruction angle relative to ship's headings	
		Forward anchor light	Aft anchor light
* * *	* *	*	*
USS Illinois	SSN 786	172° to 188°	359° to 1°.
USS Washington	SSN 787	172° to 188°	359° to 1°.

* * * * *

Approved: June 21, 2016.

C. J. Spain,

Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Acting.

Dated: June 23, 2016.

N. A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–15359 Filed 6–30–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2015–1052]

Special Local Regulations and Safety Zones; Recurring Events Held in the Coast Guard Sector Northern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulations.

SUMMARY: The Coast Guard will enforce the events outlined in Tables 1 and 2 taking place throughout the Sector Northern New England Captain of the Port (COTP) Zone. This action is necessary to protect marine traffic and spectators from the hazards associated with powerboat races, regattas, boat parades, rowing and paddling boat races, swim events, and fireworks displays. During the enforcement period, no person or vessel may transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 100.120 and 33 CFR 165.171 will be enforced for the Special Local Regulations and Safety Zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Chief Chris Bains, Waterways Management Division, U.S. Coast Guard, Sector Northern New England; telephone at 207–347–5003 or email at *marineeventsnne@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations and safety zones listed in 33 CFR 100.120 and 33 CFR 165.171. These regulations will be enforced for the duration of each event, on or about the dates indicated in TABLES 1 and 2.

TABLE 1—(33 CFR 100.120)

JUNE	
Charlie Begin Memorial Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Boothbay Harbor Lobster Boat Committee. • Date: June 18, 2016. • Time: 9:00 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of John's Island within the following points (NAD 83): 43°50′04″ N., 069°38′37″ W.

TABLE 1—(33 CFR 100.120)—Continued

	43°50′54″ N., 069°38′06″ W. 43°50′49″ N., 069°37′50″ W. 43°50′00″ N., 069°38′20″ W.
Rockland Harbor Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Rockland Harbor Lobster Boat Race Committee. • Date: June 19, 2016. • Time: 10:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Breakwater Light within the following points (NAD 83): 44°05′59″ N., 069°04′53″ W. 44°06′43″ N., 069°05′25″ W. 44°06′50″ N., 069°05′05″ W. 44°06′05″ N., 069°04′34″ W.
Windjammer Days Parade of Ships	• Event Type: Tall Ship Parade. • Sponsor: Boothbay Region Chamber of Commerce. • Date: June 29, 2016. • Time: 1:00 p.m. to 3:00 p.m. • Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of Tumbler's Island within the following points (NAD 83): 43°51′02″ N., 069°37′33″ W. 43°50′47″ N., 069°37′31″ W. 43°50′23″ N., 069°37′57″ W. 43°50′01″ N., 069°37′45″ W. 43°50′01″ N., 069°38′31″ W. 43°50′25″ N., 069°38′25″ W. 43°50′49″ N., 069°37′45″ W.
Bass Harbor Blessing of the Fleet Lobster Boat Race	• Event Type: Power Boat Race. • Sponsor: Tremont Congregational Church. • Date: June 26, 2016. • Time: 9:00 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of Bass Harbor, Maine in the vicinity of Lopaus Point within the following points (NAD 83): 44°13′28″ N., 068°21′59″ W. 44°13′20″ N., 068°21′40″ W. 44°14′05″ N., 068°20′55″ W. 44°14′12″ N., 068°21′14″ W.
JULY	
The Challenge Race	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Lake Champlain Maritime Museum. • Date: July 10, 2016. • Time: 11:00 a.m. to 1:00 p.m. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park within the following points (NAD 83): 44°12′25″ N., 073°22′32″ W. 44°12′00″ N., 073°21′42″ W. 44°12′19″ N., 073°21′25″ W. 44°13′16″ N., 073°21′36″ W.
The Great Race	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Franklin County Chamber of Commerce. • Date: July 3, 2016. • Time: 10:30 a.m. to 1:00 p.m. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay within the following points (NAD 83): 44°47′18″ N., 073°10′27″ W. 44°47′10″ N., 073°08′51″ W.
Stonington Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Stonington Lobster Boat Race Committee. • Date: July 10, 2016. • Time: 9:30 a.m. to 3:30 p.m. • Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83): 44°08′55″ N., 068°40′12″ W. 44°09′00″ N., 068°40′15″ W.

TABLE 1—(33 CFR 100.120)—Continued

	44°09′11″ N., 068°39′42″ W. 44°09′07″ N., 068°39′39″ W.
AUGUST	
Tall Ships Visiting Portsmouth	• Event Type: Regatta and Boat Parade. • Sponsor: Piscataqua Maritime Commission. • Date: August 10, 2016. • Time: 6:30 p.m. to 7:30 p.m. • Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire in the vicinity of Castle Island within the following points (NAD 83): 43°03′11″ N., 070°42′26″ W. 43°03′18″ N., 070°41′51″ W. 43°04′42″ N., 070°42′11″ W. 43°04′28″ N., 070°44′12″ W. 43°05′36″ N., 070°45′56″ W. 43°05′29″ N., 070°46′09″ W. 43°04′19″ N., 070°44′16″ W. 43°04′22″ N, 070°42′33″ W.
Eggemoggin Reach Regatta	• Event Type: Wooden Boat Parade. • Sponsor: Rockport Marine, Inc. and Brookline Boat Yard. • Date: August 6, 2016. • Time: 11:00 a.m. to 7:00 p.m. • Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83): 44°15′16″ N., 068°36′26″ W. 44°12′41″ N., 068°29′26″ W. 44°07′38″ N., 068°31′30″ W. 44°12′54″ N., 068°33′46″ W.
Lake Champlain Dragon Boat Festival	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Dragonheart Vermont. • Date: July 16, 2016 and July 17, 2016. • Time (Approximate): 8:00 a.m. to 6:00 p.m. • Date: August 6, 2016 and August 7, 2016. • Time (Approximate): 8:00 a.m. to 5:00 p.m. • Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83): 44°28′49″ N., 073°13′22″ W. 44°28′41″ N., 073°13′36″ W. 44°28′28″ N., 073°13′31″ W. 44°28′38″ N., 073°13′18″ W.
Winter Harbor Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Winter Harbor Chamber of Commerce. • Date: August 13, 2016. • Time: 10:00 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83): 44°22′06″ N., 068°05′13″ W. 44°23′06″ N., 068°05′08″ W. 44°23′04″ N., 068°04′37″ W. 44°22′05″ N., 068°04′44″ W.
Merritt Brackett Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Town of Bristol, Maine. • Date: August 14, 2016. • Time: 10:30 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83): 43°52′16″ N., 069°32′10″ W. 43°52′41″ N., 069°31′43″ W. 43°52′35″ N., 069°31′29″ W. 43°52′09″ N., 069°31′56″ W.
Long Island Lobster Boat Race	• Event Type: Power Boat Race. • Sponsor: Long Island Lobster Boat Race Committee. • Date: August 20, 2016. • Time (Approximate): 12:00 a.m. to 6:00 p.m.

TABLE 1—(33 CFR 100.120)—Continued

	• Location: The regulated area includes all waters of Casco Bay, Maine in the vicinity of Great Ledge Cove and Dorseys Cove off the north west coast of Long Island, Maine within the following points (NAD 83): 43°41′59″ N., 070°08′59″ W. 43°42′04″ N., 070°09′10″ W. 43°41′41″ N., 070°09′38″ W. 43°41′36″ N., 070°09′30″ W.

TABLE 2—(33 CFR 165.171)

JUNE	
Rotary Waterfront Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Gardiner Rotary. • Date: June 18, 2016. • Time: 8:45 p.m. to 9:30 p.m. • Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position: 44°13′52″ N., 069°46′08″ W. (NAD 83).
Windjammer Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Boothbay Harbor Region Chamber of Commerce. • Date: June 22, 2016. • Rain date: July 4, 2016. • Time: 8:30 p.m. to 9:00 p.m. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N., 069°37′57″ W. (NAD 83).
JULY	
Burlington Independence Day Fireworks	• Event Type: Fireworks Display. • Sponsor: City of Burlington, Vermont. • Date: July 3, 2016. • Time: 9:35 p.m. to 11:30 p.m. • Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont in approximate position: 44°28′31″ N., 073°13′31″ W. (NAD 83).
Colchester Triathlon	• Event Type: Swim Event. • Sponsor: Colchester Parks and Recreation Department. • Date: July 18, 2016. • Time: 8:30 a.m. to 9:30 a.m. • Location: The regulated area includes all waters of Malletts Bay on Lake Champlain, Vermont within the following points (NAD 83): 44°32′18″ N., 073°12′35″ W. 44°32′28″ N., 073°12′56″ W. 44°32′57″ N., 073°12′38″ W.
Bar Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Bar Harbor Chamber of Commerce. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 8:00 p.m. to 10:00 p.m. • Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position: 44°23′31″ N., 068°12′15″ W. (NAD 83).
Boothbay Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Boothbay Harbor. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 8:30 p.m. to 9:00 p.m. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N., 069°37′57″ W. (NAD 83).
Eastport 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Eastport 4th of July Committee. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 9:00 p.m. to 10:30 p.m.

TABLE 2—(33 CFR 165.171)—Continued

	• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position: 44°54′25″ N., 066°58′55″ W. (NAD 83).
Ellis Short Sand Park Trustee Fireworks	• Event Type: Fireworks Display. • Sponsor: William Burnham. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of York Beach, Maine in approximate position: 43°10′27″ N., 070°36′26″ W. (NAD 83).
Jonesport 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Jonesport 4th of July Committee. • Date: July 2, 2016. • Rain date: July 3, 2016. • Time: 8:45 p.m. to 9:30 p.m. • Location: In the vicinity of Beals Island, Jonesport, Maine in approximate position: 44°31′18″ N., 067°36′43″ W. (NAD 83).
Portland Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Department of Parks and Recreation, Portland, Maine. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 9:30 p.m. to 10:00 p.m. • Location: In the vicinity of East End Beach, Portland, Maine in approximate position: 43°40′16″ N., 070°14′44″ W. (NAD 83).
St. Albans Day Fireworks	• Event Type: Fireworks Display. • Sponsor: St. Albans Area Chamber of Commerce. • Date: July 2, 2016. • Time: 9:30 p.m. to 11:30 p.m. • Location: From the St. Albans Bay dock in St. Albans Bay, Vermont in approximate position: 44°48′25″ N., 073°08′23″ W. (NAD 83).
Lubec Bicentennial Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Lubec, Maine. • Date: July 3, 2016. • Rain date: July 5, 2016. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of the Lubec Public Boat Launch in approximate position: 44°51′52″ N., 066°59′06″ W. (NAD 83).
Vinalhaven 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Vinalhaven 4th of July Committee. • Date: July 2, 2016 • Rain date: July 3, 2016. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Grime's Park, Vinalhaven, Maine in approximate position: 44°02′34″ N., 068°50′26″ W. (NAD 83).
Main Street Heritage Days 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Main Street Bath Inc. • Date: July 4, 2016. • Rain date: July 5, 2016. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position: 43°54′56″ N., 069°48′16″ W. (NAD 83).
Peaks to Portland Swim	• Event Type: Swim Event. • Sponsor: Cumberland County YMCA. • Date: July 23, 2016. • Time: 9:00 a.m. to 12:00 p.m. • Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83): 43°39′20″ N., 070°11′58″ W. 43°39′45″ N., 070°13′19″ W.

TABLE 2—(33 CFR 165.171)—Continued

	43°40′11″ N., 070°14′13″ W. 43°40′08″ N., 070°14′29″ W. 43°40′00″ N., 070°14′23″ W. 43°39′34″ N., 070°13′31″ W. 43°39′13″ N., 070°11′59″ W.
Richmond Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Richmond, Maine. • Date: July 23, 2016. • Rain date: July 24, 2016. • Time: 9:00 p.m. to 10:30 p.m. • Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position: 44°08′42″ N., 068°27′06″ W. (NAD83).
Tri for a Cure Swim Clinics and Triathlon	• Event Type: Swim Event. • Sponsor: Maine Cancer Foundation. • Dates & Times: June 25, 2016 1:00 p.m. to 3:00 p.m. June 29, 2016 5:30 p.m. to 7:30 p.m. July 9, 2016 2:00 p.m. to 4:00 p.m. July 13, 2016 5:30 p.m. to 7:30 p.m. July 17, 2016 7:00 a.m. to 10:00 a.m. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83): 43°39′01″ N., 070°13′32″ W. 43°39′07″ N., 070°13′29″ W. 43°39′06″ N., 070°13′41″ W. 43°39′01″ N., 070°13′36″ W.
August	
York Beach Fire Department Fireworks	• Event Type: Fireworks Display. • Sponsor: York Beach Fire Department. • Date: August 7, 2016. • Rain date: August 14, 2016. • Time (Approximate): 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Short Sand Cove in York, Maine in approximate position: 43°10′27″ N., 070°36′25″ W. (NAD 83).
SEPTEMBER	
The Lobsterman Triathlon	• Event Type: Swim Event. • Sponsor: Tri-Maine Productions. • Date: September 17, 2016. • Time (Approximate): 8:00 a.m. to 10:00 a.m. • Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83): 43°47′59″ N., 070°06′56″ W. 43°47′44″ N., 070°06′56″ W. 43°47′44″ N., 070°07′27″ W. 43°47′57″ N., 070°07′27″ W.

The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign "PATCOM." Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Sector Northern New England. For information about regulations and restrictions for waterway use during the effective periods of these events, please refer to 33 CFR 100.120 and 33 CFR 165.171.

This notice of enforcement is issued under authority of 33 CFR 100.120, 33 CFR 165.171, and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 27, 2016.

M. A. Baroody,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern New England.

[FR Doc. 2016–15701 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Zone—July 2016

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce five safety zones for annual firework displays in the Captain of the Port, Puget Sound Zone during the dates and times noted under **SUPPLEMENTARY INFORMATION**. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port, Puget Sound or their Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced for the five safety zones listed under **SUPPLEMENTARY INFORMATION** during the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email MST1 Wayne Lau, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6051, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following five safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility in 33 CFR 165.1332 during the dates and times noted in the table below.

The following safety zones will be enforced from 5 p.m. on July 4, 2016, through 1 a.m. on July 5, 2016:

Event name	Location	Latitude	Longitude	Radius
Tacoma Freedom Fair	Commencement Bay	47°17.103′ N	122°28.410 W	300 yds.
Des Moines Fireworks	Des Moines	47°24.117′ N	122°20.033′ W	200 yds.
Three Tree Point Community Fireworks.	Three Tree Point	47°27.033′ N	122°23.15′ W	200 yds.
Roche Harbor Fireworks	Roche Harbor	48°36.7′ N	123°09.5′ W	200 yds.
Deer Harbor Annual Fireworks Display.	Deer Harbor	48°37.0′ N	123°00.25′ W	150 yds.

The special requirements listed in 33 CFR 165.1332(b) apply to the activation and enforcement of these safety zones. All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or their Designated Representative by contacting the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) on VHF Ch 13 or Ch 16 or via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority of 33 CFR 165.1332 and 5 U.S.C. 552(a). In addition to the publication of this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advanced notification of enforcement of these safety zones via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: June 27, 2016.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2016–15634 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0131]

RIN 1625–AA00

Safety Zone, Shallowbag Bay; Manteo, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Shallowbag Bay in Manteo, North Carolina. This action is necessary to provide the safety of mariners on navigable waters to protect the life and property of the maritime public and spectators from the hazards posed by aerial fireworks display. Entry into or movement within the safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

DATES: This rule is effective from 9 p.m. on July 4, 2016, through 10:30 p.m. on July 5, 2016. The safety zone created by this rule will be subject to enforcement from 9 p.m. to 10:30 p.m. on July 4, 2016. The safety zone will also be subject to enforcement from 9 p.m. to 10:30 p.m. on July 5, 2016, if the fireworks display is postponed because of adverse weather.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0131 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Derek J. Burrill, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (910) 772–2230, email *Derek.J.Burrill@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 4, 2016, fireworks will be launched from a barge located in Shallowbag Bay in Manteo, North Carolina as part of the Manteo July 4th Celebration. The Captain of the Port North Carolina is establishing a temporary safety zone on specified waters of Shallowbag Bay within a 200-yard radius of a barge anchored in approximate position 35°54′31″ N., longitude 075°39′46″ W. (NAD 1983). This safety zone will be effective and enforced from 9 p.m. to 10:30 p.m. on July 4, 2016 with a rain date being July 5, 2016 from 9 p.m. to 10:30 p.m. Access to the safety zone will be restricted during the specified dates and times. On April 26, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone, Shallowbag Bay; Manteo, NC (81 FR 24521). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 11, 2016, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Given the date of the fireworks display, it is impracticable to delay the effective date of this rule beyond July 4, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port North Carolina (COTP) has determined that potential hazards associated with the aerial fireworks on July 4, 2016 or July 5, 2016 will be a safety concern for anyone within a 200-yard radius of a barge anchored in approximate position 35°54′31″ N., longitude 075°39′46″ W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 26, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. to 10:30 p.m. on July 4, 2016 with a rain date being July 5, 2016 from 9 p.m. to 10:30 p.m. The safety zone will cover all navigable waters within 200 yards radius of a barge anchored in approximate position 35°54′31″ N., longitude 075°39′46″ W. in Shallowbag Bay in Manteo, NC. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 10:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The primary impact of these regulations will be on limiting all vessels wishing to transit the affected waterways during enforcement of the safety zone on the waters of Shallowbag Bay within a 200-yard radius of a barge anchor in approximate position 35°54′31″ N., longitude 075°39′46″ W. on July 04, 2016 from 9 p.m. to 10:30 p.m. with a rain date being July 5, 2016 from 9 p.m. to 10:30 p.m. Although these regulations prevent traffic from transiting a portion of Shallowbag Bay during this event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone to limit all vessels within a 200 yard radius of a barge anchor in approximate position 35°54′31″ N., longitude 075°39′46″ W. on July 4, 2016 from 9 p.m. to 10:30 p.m. with a rain date being July 5, 2016 from 9 p.m. to 10:30 p.m. to protect life and property of mariners from the dangers associated with aerial fireworks. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0131 to read as follows:

§ 165.T05–0131 Safety Zone, Shallowbag Bay; Manteo, North Carolina.

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: All waters of Shallowbag Bay within a 200 yard radius of a barge anchored in position 35°54′31″ N., longitude 075°39′46″ W. (NAD 1983).

(c) *Regulations.* (1) The general regulations in § 165.23 apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requesting entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative. The Captain of the Port or his designated representative can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 p.m. to 10:30 p.m. on July 4, 2016, or a rain date of July 5, 2016, unless cancelled earlier by the Captain of the Port.

Dated: June 9, 2016.

P.J. Hill,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2016–15700 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0331]

RIN 1625–AA00

Safety Zone; Confluence of James River and Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the confluence of the James River and the Appomattox River in Hopewell, Virginia. This safety zone will restrict vessel movement within a 700-foot radius of the fireworks barge during the fireworks display for the City of Hopewell centennial celebration. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks display.

DATES: This rule is effective and will be enforced from 8 p.m. through 10:45 p.m. on July 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0331 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *HamptonRoadsWaterway@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because information about the fireworks on July 2, 2016 was not received by the Coast Guard until recently, which provided insufficient time to allow for an opportunity to comment on the proposed rule. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts and local notice to mariners.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the need for the safety zone to be in place on July 2, 2016, to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with the fireworks display starting on July 2, 2016, will be a safety concern for anyone within a 700-foot radius of the fireworks barge. This rule is needed to protect the participants, patrol vessels, and other vessels transiting the navigable waters of the confluence of the James River and the Appomattox River, in Hopewell, VA, from hazards associated with a fireworks display. The potential hazards to mariners within the safety zone include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

IV. Discussion of the Rule

The Captain of the Port of Hampton Roads is establishing a safety zone on the confluence of the James River and the Appomattox River in Hopewell, VA. The safety zone will encompass all navigable waters within a 700-foot radius of the fireworks display barge location at position 37°19′27.74″ N., 077°16′45.22″ W. (NAD 1983). This safety zone still allows for navigation on the waterway. This safety zone will be established and enforced from 8 p.m. through 10:45 p.m. on July 2, 2016. Access to the safety zone will be restricted during the effective period. Except for participants and vessels authorized by the Captain of the Port or his Designated representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This includes publication in the Local Notice to Mariners and Marine Information Broadcasts.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the confluence of the James River and the Appomattox River in Hopewell, VA for less than 3 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 3 hours that will prohibit entry within a 700-foot radius of the fireworks barge. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0331 to read as follows:

§ 165.T05–0331 Safety Zone, Confluence of James River and Appomattox River; Hopewell, VA.

(a) *Definitions.* For the purposes of this section—

Captain of the Port means the Commander, Sector Hampton Roads.

Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

Participants mean individuals and vessels involved in explosives training.

(b) *Location.* The following area is a safety zone: All waters in the confluence of the James River and the Appomattox River, within a 700-foot radius of the fireworks display barge in approximate position 37°19′27.74″ N., 077°16′45.22″ W. (NAD 1983).

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representative.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his designated representative can be contacted at telephone number (757) 668–5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the safety zone except participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 8 p.m. through 10:45 p.m. on July 2, 2016.

Dated: June 15, 2016.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–15608 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0335]

RIN 1625–AA00

Safety Zone; Ohio River Mile 42.5 to 43.0, Chester, West Virginia

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all water extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by a land-based fireworks display. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 9:30 p.m. to 11:00 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0335 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 6, 2016, the Chester Volunteer Fire Department notified the Coast Guard that from 9:30 p.m. to 11:00 p.m. on July 4, 2016, it will be conducting a fireworks display launched from land in the vicinity of the Ohio River, Chester, WV. In response, on June 8, 2016 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Ohio River Mile 42.5 to 43.0, Chester, West Virginia, 81 FR 36831. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 20, 2016 we received no comments.

We are issuing this final rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Though we are not providing a full 30-day notice period, the Coast Guard did provide notice and opportunity to comment through the NPRM process. This event is advertised to the local community and this rule is necessary for safety during the fireworks event. Delaying this rule to provide a full 30-days notice is impracticable because this rule must be effective July 4, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the fireworks to be used in this July 4, 2016 display will be a safety concern for anyone in proximity of the land-based site. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Final Rule

As noted above, we received no comments on our NPRM published June 8, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9:30 p.m. to 11:00 p.m. on July 4, 2016. The safety zone will cover all navigable waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0 in Chester, WV. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 11:00 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Ohio River for less than 2 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR**

FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0335 to read as follows:

§ 165.T08–0335 Safety Zone; Ohio River Mile 42.5 to Mile 43.0, Chester, WV.

(a) *Location.* The following area is a safety zone: All waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. to 11:00 p.m. on July 4, 2016.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

L. Mcclain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–15689 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–9948–48–OECA]

RIN 2020–AA51

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this interim final rule to adjust the level of statutory civil monetary penalty amounts for the statutes that the agency administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 ("the 2015 Act"), which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA's civil penalty policies, which guide enforcement personnel in how to exercise EPA's statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay.

DATES: This interim final rule is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Susan O'Keefe, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (202) 564–4021; *okeefe.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1990, Federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties [1] that can be imposed under

---

[1] The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461 note, defines "civil monetary penalty" as "any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed

Continued

the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643). Over time, the DCIA formula caused statutory civil penalties to lose value relative to total inflation.

The 2015 Act requires agencies to: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. This rule implements the statutorily mandated initial catch-up adjustments. The purpose of the 2015 Act[2] is to provide a mechanism to address these issues by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar. Once Federal agencies issue the 2016 one-time catch-up rule, each statutory civil penalty amount will be adjusted every year to reflect the inflation that has thereafter accrued.

Pursuant to section 5(b)(2)(A) of the 2015 Act, this initial catch-up "cost-of-living adjustment" is, for each statutory civil penalty, the percentage by which the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October 2015 exceeds the CPI–U for the month of October of the year during which the amount of that civil penalty was established (*i.e.,* originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act). However, section 5(b)(2)(C) of the 2015 Act provides that the maximum amount of any initial catch-up increase shall not exceed 150 percent of the level that was in effect on November 2, 2015. Table 2 to 40 CFR 19.4 presents the results of these calculations and adjustments, identifying: (1) The maximum or minimum[3] penalty level established when each statutory section was originally enacted or last adjusted by Congress;[4] and (2) the statutory maximum or minimum civil penalty level, adjusted for inflation under the 2015 Act, that applies to statutory civil penalties assessed on or after August 1, 2016 for violations that occurred after November 2, 2015, the date the 2015 Act was enacted.

The formula[5] for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following five-step process:

Step 1: Identify the latest year that the penalty level or range was established (*i.e.,* originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act).

Step 2: Calculate the cost-of-living adjustment, which is the percentage for that statutory civil penalty by which the CPI–U for the month of October 2015 exceeds the CPI–U for the month of October of the year identified in Step 1 (hereafter referred to the "cost-of-living multiplier.")[6]

Step 3: Multiply the statutory civil penalty level derived from Step 1 by the cost-of-living multiplier calculated in Step 2 and round to the nearest dollar.

Step 4: To calculate the 150 percent increase limitation, identify the statutory civil penalty amount in effect on November 2, 2015[7] and multiply by 2.5.[8]

Step 5: Compare the statutory civil penalty amounts in Step 3 and Step 4, and take the lesser of the two amounts. The lesser amount is the statutory maximum (or minimum) civil penalty that can be assessed on or after August 1, 2016, for violations that occur after November 2, 2015. Under this rule, these amounts are listed in Table 2 of 40 CFR 19.4.

For example, with this rule, the new statutory maximum total penalty that may be assessed in an administrative penalty enforcement action under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), is increasing from $320,000 to $356,312.[9] Both of these statutory maximum penalty amounts were established or last adjusted by Congress in 1990, meaning that the applicable cost-of-living multiplier is 1.78156. Multiplying the originally enacted statutory penalty level of $200,000 by the cost-of-living multiplier of 1.78156 yields a statutory civil penalty level of $356,312 (*see* Column D). To determine the 150 percent statutory cap, multiply the inflation adjusted statutory civil maximum penalty level of $320,000, in effect as of November 2, 2015, by 2.5, which equals $800,000 (*see* Column F). The new statutory civil penalty level is the lesser of the Columns D and F, resulting in an upward adjustment for inflation of $36,312 (*see* Column H) and the new statutory civil penalty level of $356,312 (*see* Column G).

---

or enforced pursuant to an administrative proceeding or a civil action in the Federal courts."

[2] The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

[3] Under Section 3(2)(A) of the 2015 Act, "civil monetary penalty" means "a specific monetary amount as provided by Federal law"; or "has a maximum amount provided for by Federal law." EPA-administered statutes generally refer to statutory maximum civil penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than $100,000 . . ."; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of $600 "[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by person in calendar year 1992 . . . "; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of $25,000 for each frivolous trade secret claim.

[4] Section 5(b)(2)(B) provides that the cost-of-living-adjustment "shall be applied to the amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than under this Act." Because EPA has not adjusted any of the statutory civil penalty levels identified at 40 CFR 19.4 for inflation outside of the inflation adjustments made pursuant to the DCIA, the initial cost-of-living adjustment is calculated based on the statutory civil penalty amount as originally enacted or last adjusted by Congress.

[5] Office of Management and Budget Memorandum, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015* (OMB Memorandum M–16–06) at p. 8, Appendix (February 24, 2016).

[6] *See* OMB Memorandum M–16–06 at p. 6 for a list of the applicable cost-of-living multipliers by year.

[7] 78 FR 66643 (November 6, 2013).

[8] To calculate the 150 percent increase limitation, multiply the inflation adjusted statutory civil penalty amounts in effect on November 2, 2015 by 2.5 or 250 percent.

[9] Note that CAA section 113(d)(1) and section 205(c)(1) authorize the imposition of a higher statutory maximum civil penalty in an administrative enforcement action if the EPA Administrator and the Attorney General jointly decide that a higher statutory maximum civil penalty is appropriate in a particular matter.

Citation	Year enacted A	Original statutory civil penalty level B	Multiplier C	Original statutory civil penalty level × multipier D	Statutory civil penalty level as of November 2, 2015 E	Statutory civil penalty level (as of November 2, 2015) × 2.5 F	New statutory civil penalty level: The lesser of (D) and (F) G	Difference in penalty levels between (G) and (E) H
CLEAN AIR ACT (CAA), 42 U.S.C. 7413(d)(1), 7524(c)(1)	1990	$200,000	1.78156	$356,312	$320,000	$800,000	$356,312	$36,312

The 2015 Act allows agencies to limit the catch-up adjustment to less than the otherwise required amount only under narrowly defined circumstances. To do so, EPA must determine, and the Director of the Office of Management and Budget (OMB) must concur, that "increasing the civil monetary penalty by the otherwise required amount will have a negative economic impact; or the social costs of increasing the civil monetary penalty by the otherwise required amount outweigh the benefits."[10] In its February 24, 2016 guidance to Federal agencies on the implementation of the 2015 Act, OMB made clear that it expects reductions from the statutorily prescribed catch-up adjustment levels "to be rare."[11] This rare exception does not apply to the civil penalty provisions covered by this rule.

With this rule, the new statutory maximum (or minimum) penalty levels listed in Table 2 to 40 CFR 19.4 will apply to all statutory civil penalties assessed on or after August 1, 2016, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The statutory civil penalty levels, as codified at Table 1 to 40 CFR 19.4, will continue to apply to (1) violations that occurred on or before November 2, 2015, and (2) violations that occurred after November 2, 2015, where the penalty assessment was made prior to August 1, 2016.

II. The 2015 Act Requires Federal Agencies To Issue These Adjustments by Interim Final Rule

Section 4 of the 2015 Act directs Federal agencies to publish the initial catch-up adjustment through an interim final rule no later than July 1, 2016, which must be effective no later than August 1, 2016. Because the 2015 Act prescribes the formula that Federal agencies must follow to calculate the mandated inflation adjustments, the law does not provide Federal agencies any discretion to vary the amount of the statutory civil penalty changes to reflect any views or suggestions provided by commenters. Accordingly, pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), EPA finds that there is good cause to promulgate this rule without providing for public comment. It would be impracticable and unnecessary to delay publication of this rule pending opportunity for notice and comment because the 2015 Act does not allow agencies to alter the rule based on public comment.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866, OMB determined this interim final rule to be a "non-significant" regulatory action and, therefore, it did not undergo interagency review.[12]

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that could be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a substantial direct effect on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

---

[10] Section 4(c)(1) of the 2015 Act.

[11] *See* OMB Memorandum M–16–06 at p.3.

[12] *See* OMB Memorandum M–16–06 at pp. 3–4.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The rule does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The primary purpose of this rule is to reconcile the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. Because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula. Since there is no discretion under the 2015 Act in determining the statutory civil penalty level, EPA cannot vary the amount of the statutory civil penalty adjustment to address other issues, including environmental justice issues.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency finds that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Dated: June 23, 2016.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 19 of the Code of Federal Regulations is amended as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 is revised to read as follows:

Authority: Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

The penalty levels in the last column of Table 1 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties are assessed before August 1, 2016. The statutory civil penalty levels set forth in the last column of Table 2 to § 19.4 apply to all violations which occur after November 2, 2015, where the penalties are assessed on or after August 1, 2016.

■ 3. Amend § 19.4 by:

■ a. Revising the section heading and the introductory text;

■ b. In Table 1, amending the last column heading by removing the text "Penalties effective after December 6, 2013"; and adding "Statutory civil penalties for violations that occurred after December 6, 2013 through November 2, 2015, or are assessed before August 1, 2016" in its place; and

■ c. Adding a new Table 2.

The revisions and addition read as follows:

§ 19.4 Statutory civil penalties, as adjusted for inflation, and tables.

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil penalty levels, as adjusted for inflation, for violations occurring on or before November 2, 2015, and for violations occurring after November 2, 2015, where penalties are assessed before August 1, 2016. Table 2 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, with the last column displaying the operative statutory civil penalty levels where penalties are assessed on or after August 1, 2016, for violations that occurred after November 2,2015.

* * * * *

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
7 U.S.C. 136*l*.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	$5,000	$18,750
7 U.S.C. 136*l*.(a)(2)[1]	FIFRA	1,000/500/1,000	2,750/1,772/2,750

---

[1] Note that 7 U.S.C. 136*l*.(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of $1,000 and the $500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L 95–396), and the second mention of $1,000 was enacted in 1972 (Pub. L. 92–516).

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	25,000	37,500
15 U.S.C. 2647(a)	TSCA	5,000	10,781
15 U.S.C. 2647(g)	TSCA	5,000	8,908
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	5,000	10,781
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	600	1,187
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336
33 U.S.C. 1901 note (*see* 1409(a)(2)(A))	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	10,000/25,000	13,669/34,172
33 U.S.C. 1901 note (*see* 1409(a)(2)(B))	CACSO	10,000/125,000	13,669/170,861
33 U.S.C. 1901 note (*see* 1409(b)(1))	CACSO	25,000	34,172
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	25,000	70,117
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT (SDWA)	25,000	53,907
42 U.S.C. 300g–3(g)(3)(A)	SDWA	25,000	53,907
42 U.S.C. 300g–3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561
42 U.S.C. 300g–3(g)(3)(C)	SDWA	25,000	37,561
42 U.S.C. 300h–2(b)(1)	SDWA	25,000	53,907
42 U.S.C. 300h–2(c)(1)	SDWA	10,000/125,000	21,563/269,535
42 U.S.C. 300h–2(c)(2)	SDWA	5,000/125,000	10,781/269,535
42 U.S.C. 300h–3(c)	SDWA	5,000/10,000	18,750/40,000
42 U.S.C. 300i(b)	SDWA	15,000	22,537
42 U.S.C. 300i–1(c)	SDWA	100,000/1,000,000	131,185/1,311,850
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375
42 U.S.C. 300j–4(c)	SDWA	25,000	53,907
42 U.S.C. 300j–6(b)(2)	SDWA	25,000	37,561
42 U.S.C. 300j–23(d)	SDWA	5,000/50,000	9,893/98,935
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD—BASED PAINT HAZARD REDUCTION ACT OF 1992.	10,000	16,773
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	25,000	93,750
42 U.S.C. 6928(c)	RCRA	25,000	56,467
42 U.S.C. 6928(g)	RCRA	25,000	70,117
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467
42 U.S.C. 6934(e)	RCRA	5,000	14,023
42 U.S.C. 6973(b)	RCRA	5,000	14,023
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312
42 U.S.C. 7413(d)(3)	CAA	5,000	8,908
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	25,000	53,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	25,000	53,907

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907
42 U.S.C. 14304(a)(1)	MERCURY—CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	10,000	15,025
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025

[FR Doc. 2016–15411 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2016–0059; FRL–9948–57–Region 2]

Approval of Air Quality Implementation Plans; New Jersey, Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Jersey Department of Environmental Protection. This revision establishes an updated ten-year carbon monoxide (CO) limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County. New Jersey qualifies for a limited maintenance plan, rather than a full maintenance plan, because monitoring concentrations of CO are less than 85% of the standard. In a limited maintenance plan, future-year projection inventories and transportation conformity budgets are not required. In addition, EPA is also approving the 2007 Attainment/Base Year CO emissions inventory and the shutdown of 5 CO maintenance monitors in New Jersey.

The New Jersey portion of the NYNNJLI CO area was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on August 23, 2002 and a maintenance plan was also approved at that time. By this action, EPA is approving a second limited maintenance plan for this area because it provides for continued attainment of the CO NAAQS for an additional ten years. The intended effect of this rulemaking is to approve a SIP revision that will insure continued maintenance of the CO NAAQS.

DATES: This final rule is effective on *August 1, 2016.*

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0059. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–3382, or by email at *feingersh.henry@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary Information section is arranged as follows:

Table of Contents

I. What Action is EPA Taking?
II. What Comments did EPA Receive on its Proposal and What are EPA's Responses?
III. What is the Adequacy Status of the CO Limited Maintenance Plan for the New Jersey Portion of the New York-Northern New Jersey-Long Island Area?
IV. What is EPA's Final Action?
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving New Jersey's SIP revision updating their existing ten-year carbon monoxide (CO) maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area, which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County, with another ten-year plan. The reader is referred to the March 25, 2016 (81 FR 16102) proposal for details on this rulemaking.

II. What comments did EPA receive on its proposal and what are EPA's responses?

EPA did not receive any comments on our proposed approval of the updated CO limited maintenance plan. EPA is approving the New Jersey SIP revision request.

III. What is the adequacy status of the CO limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island area?

Section 118(e) of the transportation conformity rule (40 CFR part 93) states that a conformity determination cannot be made using submitted motor vehicle emission budgets ("budgets") until EPA makes a positive determination that the submitted budgets are adequate. In accordance with our rule, the limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area was posted for adequacy review on July 27, 2015 on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

As a general rule, however, limited maintenance plans, such as the maintenance plan for the NYNNJLI CO area, do not include budgets. Instead, for those areas that qualify under our limited maintenance plan policy for CO, we have concluded that the area will continue to maintain the CO NAAQS regardless of the quantity of emissions from the on-road transportation sector, and thus there is no need to cap emissions from the on-road transportation sector for the maintenance period.

Therefore, EPA's adequacy review of the limited maintenance plan for the NYNNJLI CO area primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for CO. From our review, EPA has concluded that the NYNNJLI CO area meets the criteria for a limited maintenance plan, and therefore we find the maintenance plan for the NYNNJLI CO area adequate for conformity purposes under our limited maintenance plan policy.

IV. What is EPA's final action?

EPA is approving New Jersey's SIP revision updating their existing ten-year CO maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area. EPA is also approving the 2007 CO base year emissions inventory and the shutdown of 5 CO maintenance monitors in New Jersey.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 21, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1581 is amended by adding paragraph (f) to read as follows:

§ 52.1581 Control strategy: Carbon monoxide.

* * * * *

(f) Approval—The June 11, 2015 and February 8, 2016 revisions to the carbon monoxide (CO) maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island, NYNNJLI, CO area. These revisions contain a second ten-year limited maintenance plan that demonstrates continued attainment of the National Ambient Air Quality Standard for CO through the year 2024, a 2007 CO base year emissions inventory, and the shutdown of five CO maintenance monitors.

[FR Doc. 2016–15609 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0118; FRL–9947–34]

2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer With ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1); when used as an inert ingredient in a pesticide chemical formulation. Celanese Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) on food or feed commodities.

DATES: This regulation is effective July 1, 2016. Objections and requests for hearings must be received on or before August 30, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0118, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0118 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 30, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0118, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of April 25, 2016 (81 FR 24044) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10899) filed by Celanese Ltd., 222 W Las Colinas Blvd., Suite 900N, Irving, TX 75039. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1); CAS Reg. No. 518057–54–0. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . ." and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as listed in 40 CFR 723.250(d)(6). Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e):

8. The polymer's number average MW of 20,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) is 20,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2 -methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the

U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1).

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1).

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 16, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, add alphabetically the polymer "2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1), minimum number average molecular weight (in amu), 20,000" to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * *	*
2-propenoic acid, 2-methyl-, 2-oxiranylmethyl ester, polymer with ethene, ethenyl acetate, ethenyltrimethoxysilane and sodium ethenesulfonate (1:1), minimum number average molecular weight (in amu), 20,000	518057–54–0

Polymer	CAS No.

* * * * * * *

[FR Doc. 2016–15614 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1065

Engine-Testing Procedures; CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 1000 to End, revised as of July 1, 2015, on page 857, in § 1065.670, the second paragraph of introductory text is removed.

[FR Doc. 2016–15805 Filed 6–30–16; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 16–656; MB Docket No. 16–74; RM–11763]

Radio Broadcasting Services; Raymond, Washington

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Sunnylands Broadcasting, LLC, the Audio Division amends the FM Table of Allotments, by allotting Channel 300A at Raymond, Washington, as the community's second local service. A staff engineering analysis indicates Channel 300A can be allotted to Raymond consistent with the minimum distance separation requirements of the Commission's rules with a site restriction located 4.7 kilometers (3.0 miles) southwest of the community. The reference coordinates are 46–38–49 NL and 123–45–11 WL.

DATES: Effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 16–74, adopted June 17, 2016, and released June 17, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/*. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Raymond, Channel 300A.

[FR Doc. 2016–15545 Filed 6–30–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA–2004–17530; Notice No. 4]

RIN 2130–AC61

Inflation Adjustment of the Ordinary Maximum and Aggravated Maximum Civil Monetary Penalties for a Violation of the Hazardous Material Transportation Laws or Regulations, Orders, Special Permits, and Approvals Issued Under Those Laws

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, FRA is adjusting the minimum penalty, ordinary maximum penalty, and the aggravated maximum penalty that it will apply when assessing a civil monetary penalty for a knowing violation of the Federal hazardous material transportation laws or a regulation, special permit, order, or approval issued under those laws. The aggravated maximum penalty is available only for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In particular, FRA is increasing the minimum penalty for a training violation from $450 to $463; the ordinary maximum civil monetary penalty per violation from $75,000 to $77,114; and the aggravated maximum civil penalty from $175,000 to $179,933.

DATES: This interim final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Roberta Stewart, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6027), *roberta.stewart@dot.gov*.

SUPPLEMENTARY INFORMATION: On November 2, 2015, President Barack Obama signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Act). Public Law 114–74, Sec. 701. This amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) that required each agency to (1) adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996, and (2) adjust those penalty amounts once every four years thereafter, to reflect inflation. See Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996. Under the 2015 Inflation Act, agencies must make a catch-up adjustment for CMPs with the new penalty levels published by July 1, 2016, to take effect no later than August 1, 2016. In addition, agencies must make annual inflation adjustments, starting January 15, 2017, based on Office of Management and Budget (OMB) guidance.

In the 2015 Inflation Act, Congress recognized the important role CMPs play in deterring violations of Federal laws, regulations, and orders and determined that inflation has diminished the impact of these penalties. In the Inflation Act, Congress countered the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

This interim final rule is published under 49 U.S.C. 5123 and 5124, which provide civil and criminal penalties for violations of the Federal hazardous material transportation laws or a regulation, order, special permit, or approval issued under those laws. The Pipeline and Hazardous Materials Safety Administration (PHMSA) issues the hazardous material transportation regulations. 49 CFR 1.96(b)(1). However, FRA is authorized as the delegate of the Secretary of Transportation to enforce the hazardous material statutes, regulations and orders, including the civil penalty provisions codified primarily at 49 U.S.C. 5123. 49 CFR 1.89(j). In this interim final rule, FRA is amending all references to the minimum and maximum civil penalties in 49 CFR part 209, app. B, to raise the minimum CMP for training violations from $450 to $463; the ordinary maximum CMP per violation from $75,000 to $77,114; and the aggravated maximum CMP from $175,000 to $179,933.

Description of the Adjustment Calculation

The 2015 Inflation Act requires FRA to calculate the inflation adjustment by increasing the maximum CMP, or the range of minimum and maximum CMPs, based on the Consumer Price Index for the month of October 2015, not seasonally adjusted. The calculation uses multipliers to adjust the maximum CMP, or the range of minimum and maximum CMPs, based on the year the penalty was established or last adjusted by statute or regulation other than under the Inflation Act. Congress passed the Moving Ahead for Progress in the 21st Century Act in 2012 (MAP–21), which amended the maximum penalty (ordinary maximum) for a knowing violation of a Federal hazardous material safety law, regulation, order, special permit, or approval to $75,000. Public Law 112–141 (July 6, 2012). MAP–21 also set at $175,000 the maximum civil penalty for a person who knowingly violates the Federal hazardous material transportation laws or a regulation, order, special permit, or approval issued under those laws that results in death, serious illness, or severe injury to any person or substantial destruction of property (aggravated maximum), and also added a $450 minimum for a training violation.

OMB guidance, M–16–06, "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," dated Feb. 24, 2016, states that after applying the multiplier, FRA must round the penalty levels to the nearest dollar.[1] The 2015 Inflation Act also specifies that agencies shall not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. If the new amount or range of the increase exceeds 150 percent above the last reported level(s), the new amount or range should be reduced to 150 percent over the last reported level(s). The resulting penalty level(s) in that case would be 250 percent of the last reported level(s).

Applying the inflation adjustment calculation, FRA determined the minimum CMP for training violations should be raised from $450 to $463; the ordinary maximum CMP should be raised from $75,000 to $77,114; and the aggravated maximum CMP should be raised from $175,000 to $179,933.

Calculations To Determine CMP Updates for 2016

1. Minimum CMP of $450 for Training Violations Raised to $463

As the 2015 Inflation Act requires, FRA evaluated the minimum CMP of $450 for training violations and concluded it should increase to $463, as the next calculations show. The 2012 multiplier of 1.02819 (since the last update not for inflation was in 2012, by MAP–21) times $450 equals $462.68, or $463 rounded to the nearest dollar. The statutory 150 percent ceiling would be $450 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $1,125. Because $463 is less than the $1,125 ceiling, the 150 percent limit does not apply. The inflation adjusted minimum penalty is $463, and applies to all violations of the hazardous materials statutes, regulations, special permits, approvals, and orders related to training. This new FRA minimum penalty for training violations will apply to violations that occur on or after August 1, 2016.

2. Ordinary Maximum CMP of $75,000 Raised to $77,114

As the 2015 Inflation Act requires, FRA evaluated the ordinary maximum CMP and determined it should increase to $77,114, as the following calculations show. The 2012 multiplier of 1.02819 (since the last update not for inflation was in 2012, by MAP–21) times $75,000 equals $77,114.25, or $77,114 rounded to the nearest dollar. The statutory 150 percent ceiling would be $75,000 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $187,500. Because $77,114 is less than the $ 187,500 ceiling, the 150 percent limit does not apply. The inflation adjusted ordinary maximum penalty is $77,114, and applies to all violations of the hazardous materials transportation statutes, regulations, special permits, approvals, and orders. Therefore, the ordinary maximum CMP should increase from $75,000 to $77,114. This new FRA ordinary maximum penalty will apply to violations that occur on or after August 1, 2016.

3. Aggravated Maximum CMP of $175,000 Raised to $179,933

FRA also evaluated the maximum CMP for an aggravated violation and determined it should increase to $179,933, as the following calculations show. The 2012 multiplier of 1.02819 (since the last update not for inflation was in 2012, by MAP–21) times $175,000 equals $179,933.25, or $179,933, rounded to the nearest dollar. The statutory 150 percent ceiling would be $175,000 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $437,500 Because $179,933 is less than the $437,500 ceiling, the 150 percent limit does not apply. The inflation adjusted aggravated maximum penalty is $179,933, and applies to all violations of the hazardous materials transportation statutes, regulations, special permits, approvals, and orders. Therefore, the aggravated maximum should increase from $175,000 to $179,933. This new FRA aggravated maximum penalty will apply to violations that occur on or after August 1, 2016.

Public Participation

FRA is proceeding to an interim final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments the 2015 Inflation Act requires are ministerial acts over which FRA has no discretion, making public comment unnecessary. As such, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of the Administrative Procedure Act (APA), 5 U.S.C.

---

[1] Available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.* See also Public Law 114–74, Sec. 701.

553(b)(3)(B). FRA is issuing these amendments as an interim final rule applicable to all future hazardous materials transportation civil penalty cases under its authority to cite for violations that occur on or after the effective date of this interim final rule.

Regulatory Impact

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated consistent with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866. The rule is expected to have minimal economic impacts. Additionally, FRA has no discretion to change the amount by which the CMPs are updated due to the clear direction in the 2015 Inflation Act and OMB memorandum M–16–06. Further, this rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; Feb. 26, 1979) because it is limited to ministerial acts on which the agency has no discretion, and the economic impact of the interim final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), require agency review of proposed and final rules to assess their impact on "small entities" for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities. FRA does not expect this interim final rule will have a significant economic impact on a substantial number of small entities. Although this interim final rule will apply to railroads, hazardous materials shippers, and others that are considered small entities, there is no economic impact on any person who complies with the Federal hazardous materials laws and the regulations, special permits, approvals, and orders issued under those laws.

In addition, FRA has determined the RFA does not apply to this rulemaking. The 2015 Inflation Act requires FRA to publish an interim final rule and does not require FRA to complete notice and comment procedures under the APA. The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2003), provides that:

> If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)] . . . . If an NPRM is not required, the RFA does not apply.

Therefore, because the 2015 Inflation Act does not require an NPRM for this rulemaking, the RFA does not apply.

C. Federalism

This interim final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, consistent with Executive Order 13132 (Federalism), preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this interim final rule to submit for OMB review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure, in the aggregate, of $156,000,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532), preparation of a written statement detailing the effect of such an expenditure is not warranted.

F. Environmental Impact

FRA has evaluated this interim final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545; May 26, 1999). FRA has determined that this interim final rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's NEPA Procedures, "Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation." See 64 FR 28547 (May 26, 1999). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA's Procedures, FRA has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to comply with the Inflation Act, as amended by the 2015 Inflation Act. Specifically, FRA is adjusting the minimum, maximum, and aggravated maximum penalty that it will apply when assessing a civil penalty for a violation of a Federal hazardous materials law, regulation, special permit, approval, or order. FRA does not anticipate any environmental impacts from this requirement and finds there are no extraordinary circumstances present in connection with this interim final rule.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534; May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this interim final rule under Executive Order 12898 and the DOT Order and has determined that it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this interim final rule under the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The interim final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Interim Final Rule

In consideration of the foregoing, part 209 of subtitle B, chapter II of title 49 of the Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Revise § 209.103(a) and (c) to read as follows:

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous materials transportation laws, an order issued thereunder, subchapter A or C of chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil penalty of not more than $77,114 for each violation, except that—

(1) The maximum civil penalty for a violation is $179,933 if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property and

(2) A minimum $463 civil penalty applies to a violation related to training.

* * * * *

(c) The maximum and minimum civil penalties described in paragraph (a) above apply to violations occurring on or after August 1, 2016.

■ 3. Revise the last sentence of § 209.105(c) to read as follows:

§ 209.105 Notice of probable violation.

(c) * * * In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of $77,114 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of $179,933.

Appendix B to Part 209—[Amended]

■ 4. Amend appendix B to part 209 as follows:

■ a. In the introductory text, revise the second sentence of the first paragraph, the last sentence of the second paragraph, and the next to last sentence of the third paragraph;

■ b. In the table "CIVIL PENALTY ASSESSMENT GUIDELINES," below the heading "PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGES," revise the entry for "§§ 173.24(b)(1) and 173.24(b)(2) and 173.24(f)(1) and 173.24(f)(1)(ii)", and revise the entry for "§ 173.24(c)"; and

■ c. Revise footnote 2.

The revisions read as follows:

Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Materials Assessments

* * * The guideline penalty amounts reflect the best judgment of the FRA Office of Railroad Safety (RRS) and of the Safety Law Division of the Office of Chief Counsel (RCC) on the relative severity of the various violations routinely encountered by FRA inspectors on a scale of amounts up to the maximum $77,114 penalty, except the maximum civil penalty is $179,933 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, and a minimum $463 penalty applies to a violation related to training. * * *

* * * When a violation of the Federal hazardous material transportation law, an order issued thereunder, the Hazardous Materials Regulations or a special permit, approval, or order issued under those regulations results in death, serious illness or severe injury to any person, or substantial destruction of property, a maximum penalty of at least $77,114 and up to and including $179,933 shall always be assessed initially.

* * * In fact, FRA reserves the express authority to amend the NOPV to seek a penalty of up to $77,114 for each violation, and up to $179,933 for any violation resulting in death, serious illness or severe injury to any person, or substantial destruction of property, at any time prior to issuance of an order. * * *

Civil Penalty Assessment Guidlenes

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGES

* * * * *

49 CFR Section	Description	Guideline amount[2]
*	* * * *	*
173.24(b)(1) and 173.24(b)(2) and 173.24(f)(1) and 173.24(f)(1)(ii).	Securing closures: These subsections are the general "no leak" standard for all packagings. Sec. 173.24(b) deals primarily with *packaging* as a whole, while § 173.24(f) focuses on *closures.* Use § 173.31(d) for tank cars, when possible. Cite the sections accordingly, using both the leak/non-leak criteria and the package size considerations to reach the appropriate penalty. *Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of $77,114, and up to $179,933 if the violation results in death, serious illness or injury or substantial destruction of property. For intermodal (IM) portable tanks and other tanks of that size range, use the tank car penalty amounts, as stated in § 173.31.*	
	—Small bottle or box.	1,000
	—55-gallon drum.	2,500
	—Larger container, e.g., IBC; *not* portable tank or tank car.	5,000

49 CFR Section	Description	Guideline amount[2]
	—IM portable tank, cite § 173.24(f) and use the penalty amounts for tank cars: Residue, generally, § 173.29(a) and, loaded, § 173.31(d).	
	—Residue adhering to outside of package (i.e., portable tanks, tank cars, etc.).	5,000
173.24(c)	Use of package not meeting specifications, including required stencils and markings. The most specific section for the package involved should be cited (see below). The penalty guideline should be adjusted for the size of the container. *Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of $77,114, and up to $179,933 if the violation results in death, serious illness or injury or substantial destruction of property.*	
	—Small bottle or box.	1,000
	—55-gallon drum.	2,500
	—Larger container, e.g., IBC; *not* portable tank or tank car, *but* this section is applicable to a hopper car..	5,000
	For more specific sections: Tank cars–§ 173.31(a), portable tanks–§ 173.32, and IM portable tanks–§§ 173.32a, 173.32b, and 173.32c.	

* * * * *

[2] A person who knowingly violates the hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder, is subject to a civil penalty of up to $77,114 for each violation, except that the maximum civil penalty for a violation is $179,933 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property; and a minimum $463 civil penalty applies to a violation related to training. Each day that the violation continues is a separate offense. 49 U.S.C. 5123; 28 U.S.C. 2461, note.

Corey Hill,

Executive Director.

[FR Doc. 2016–15642 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 272

[Docket No. FRA–2016–0021; Notice No. 1]

RIN 2130–AC59

Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, FRA is adjusting the minimum, maximum, and aggravated maximum penalties that it will apply when assessing a civil penalty for a violation of a railroad safety statute, regulation, or order under its authority. In particular, FRA is increasing the minimum civil penalty per violation from $650 to $839, the ordinary maximum civil penalty per violation from $25,000 to $27,455, and the aggravated maximum civil penalty (*i.e.,* the maximum civil penalty per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury) from $105,000 to $109,819.

DATES: This interim final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–0273), *veronica.chittim@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 2, 2015, President Barack Obama signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Act). Public Law 114–74, Sec. 701. This amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) that required each agency to (1) adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996, and (2) adjust those penalty amounts once every four years thereafter, to reflect inflation. See Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996. Under the 2015 Inflation Act, agencies must make a catch-up adjustment for CMPs with the new penalty levels published by July 1, 2016, to take effect no later than August 1, 2016. In addition, agencies must make annual inflation adjustments, starting January 15, 2017, based on Office of Management and Budget (OMB) guidance.

In the 2015 Inflation Act, Congress recognized the important role CMPs play in deterring violations of Federal laws, regulations, and orders and determined that inflation has diminished the impact of these penalties. In the Inflation Act, Congress countered the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. 213. See 49 U.S.C. 103 and 49 CFR 1.89; 49 U.S.C. 201–213. FRA currently has safety regulations in 33 parts of the CFR that contain the agency's authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the CFR. In this interim final rule, FRA is amending each of the separate regulatory provisions and the corresponding footnotes in each Schedule of Civil Penalties appended to those regulations to raise the minimum CMP to $839, ordinary maximum CMP to $27,455, and aggravated maximum CMP to $109,819. Where applicable, FRA is amending the corresponding appendices to those regulatory provisions which outline FRA enforcement policy. See 49 CFR part 209, app. A; 49 CFR part 228, app. A.

Description of the Adjustment Calculation

The 2015 Inflation Act requires FRA to calculate the inflation adjustment by increasing the maximum CMP, or the range of minimum and maximum CMPs, based on the Consumer Price Index for the month of October 2015, not seasonally adjusted. The calculation uses multipliers to adjust the maximum CMP, or the range of minimum and maximum CMPs, based on the year the penalty was established or last adjusted by statute or regulation other than under the Inflation Act. FRA's minimum CMP ($500) was last adjusted by statute in 1992. See Rail Safety Enforcement and Review Act, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), Sec. 4(a). The ordinary maximum CMP ($25,000) and aggravated maximum CMP ($100,000) were last adjusted by statute in 2008. See Rail Safety Improvement Act of 2008 (RSIA of 2008), Public Law 110–342, Div. A, 122 Stat. 4848, (Oct. 16, 2008), Sec. 302; 73 FR 79698 (Dec. 30, 2008). OMB guidance, M–16–06, "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," dated Feb. 24, 2016, states that after applying the multiplier, FRA must round the penalty levels to the nearest dollar.[1] The 2015 Inflation Act also specifies that agencies shall not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. The 150 percent limit applies to the amount of the increase. If the new amount or range of the increase exceeds 150 percent above the last reported level(s), the new amount or range should be reduced to 150 percent over the last reported level(s). The resulting penalty level(s) in that case would be 250 percent of the last reported level(s).

Applying the inflation adjustment calculation, FRA determined the minimum CMP should be increased to $839; the ordinary maximum CMP should be increased to $27,455; and the aggravated maximum CMP should be increased to $109,819, as the following calculations show.

Calculations To Determine CMP Updates for 2016

1. Minimum CMP of $650 Raised to $839

As the 2015 Inflation Act requires, FRA evaluated the minimum CMP and concluded it should increase to $839, as the next calculations show. The 1992 multiplier of 1.67728 (since the last update not for inflation was in 1992) times $500 equals $838.64, or $839 rounded to the nearest dollar. The statutory 150 percent ceiling would be $650 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $1,625. Because $839 is less than the $1,625 ceiling, the 150 percent limit does not apply. The inflation adjusted minimum penalty is $839, and applies to all the rail safety statutes, regulations, and orders. See appendix to this interim final rule. Thus, FRA's minimum CMP increases from $650 to $839. This new FRA minimum penalty will apply to violations that occur on or after August 1, 2016.

2. Ordinary Maximum CMP of $25,000 Raised to $27,455

As required by the 2015 Inflation Act, FRA evaluated the ordinary maximum CMP and determined it should increase to $27,455, as the following calculations show. The 2008 multiplier of 1.09819 (since the last update not for inflation was in 2008) times $25,000 equals $27,454.75, or $27,455 rounded to the nearest dollar. The statutory 150 percent ceiling would be $25,000 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $62,500. Because $27,455 is less than the $62,500 ceiling, the 150 percent limit does not apply. The inflation adjusted ordinary maximum penalty is $27,455, and applies to all the rail safety statutes, regulations, and orders. See appendix to this interim final rule. Therefore, the ordinary maximum CMP increases from $25,000 to $27,455. This new FRA ordinary maximum penalty will apply to violations that occur on or after August 1, 2016.

3. Aggravated Maximum CMP of $105,000 Raised to $109,819

FRA also evaluated the CMP for an aggravated violation and determined it should increase to $109,819, as the following calculations show. The 2008 multiplier of 1.09819 (since the last update not for inflation was in 2008) times $100,000 equals $109,819. The statutory 150 percent ceiling would be $105,000 (the penalty level in effect on November 2, 2015, including Inflation Act increases), times 2.5, or $262,500. Because $109,819 is less than the $262,500 ceiling, the 150 percent limit does not apply. The inflation adjusted aggravated maximum penalty is $109,819, and applies to all the rail safety statutes, regulations, and orders. See appendix to this interim final rule. Therefore, the aggravated maximum increases from $105,000 to $109,819. This new FRA aggravated maximum penalty will apply to violations that occur on or after August 1, 2016.

Public Participation

FRA is proceeding to an interim final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments the 2015 Inflation Act requires are ministerial acts over which FRA has no discretion, making public comment unnecessary. As such, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). FRA is issuing these amendments as an interim final rule applicable to all future rail safety civil penalty cases under its authority to cite for violations that occur on or after the effective date of this interim final rule.

Regulatory Impact

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated consistent with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866. The rule is expected to have minimal economic impacts. Additionally, FRA has no discretion to change the amount by which the CMPs are updated due to the clear direction in the 2015 Inflation Act and OMB memorandum M–16–06. Further, this rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; Feb. 26, 1979) because it is limited to ministerial acts on which the agency has no discretion, and the economic impact of the interim final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), require agency review of proposed and final rules to assess their impact on "small entities" for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities. FRA does not expect this interim final rule will have a significant economic impact on a substantial number of small entities. Although this interim final rule will apply to railroads and others that are considered small entities, there is no economic impact on any person who complies with the Federal railroad safety laws and the regulations and orders issued under those laws.

---

[1] Available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.* See also Public Law 114–74, Sec. 701.

In addition, FRA has determined the RFA does not apply to this rulemaking. The 2015 Inflation Act requires FRA to publish an interim final rule and does not require FRA to complete notice and comment procedures under the APA. The Small Business Administration's *A Guide for Government Agencies: How To Comply With the Regulatory Flexibility Act* (2003), provides that:

> If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)] . . . . If an NPRM is not required, the RFA does not apply.

Therefore, because the 2015 Inflation Act does not require an NPRM for this rulemaking, the RFA does not apply.

C. Federalism

This interim final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, consistent with Executive Order 13132 (Federalism), preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this interim final rule to submit for OMB review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of $156,000,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4, 2 U.S.C. 1532), preparation of a written statement detailing the effect of such an expenditure is not warranted.

F. Environmental Impact

FRA has evaluated this interim final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545; May 26, 1999). FRA has determined that this interim final rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's NEPA Procedures, "Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation." See 64 FR 28547 (May 26, 1999). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. See *id.* Under section 4(c) and (e) of FRA's Procedures, FRA has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to comply with the Inflation Act, as amended by the 2015 Inflation Act. Specifically, FRA is adjusting the minimum, maximum, and aggravated maximum penalty that it will apply when assessing a civil penalty for a violation of a railroad safety statute, regulation, or order under its authority. FRA does not anticipate any environmental impacts from this requirement and finds there are no extraordinary circumstances present in connection with this interim final rule.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534; May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this interim final rule under Executive Order 12898 and the DOT Order and has determined that it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this interim final rule under the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The interim final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 216

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

The Interim Final Rule

In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 272 of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 209.409 [Amended]

■ 2. Amend § 209.409 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839".
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

■ 3. In appendix A to part 209, amend the section on "Penalty Schedules: Assessment of Maximum Penalties" by:
■ a. Redesignating the sixth through ninth paragraphs as the seventh through tenth paragraphs;
■ b. Adding a new sixth paragraph;
■ c. Revising the third sentence of the redesignated seventh paragraph;
■ d. Revising the first sentence of the redesignated tenth paragraph; and
■ e. Removing the second sentence of the redesignated tenth paragraph.

The revisions and additions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

On November 2, 2015, President Barack Obama signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Act). Public Law 114–74, Sec. 701. Under the 2015 Inflation Act, agencies must make a catch-up adjustment for civil monetary penalties with the new penalty levels published by July 1, 2016, to take effect no later than August 1, 2016. Moving forward, agencies must make annual inflationary adjustments, starting January 15, 2017, based on Office of Management and Budget guidance. Under the 2015 Inflation Act, effective August 1, 2016, the minimum civil monetary penalty was raised from $650 to $839, the ordinary maximum civil monetary penalty was raised from $25,000 to $27,455, and the aggravated maximum civil monetary penalty was raised from $105,000 to $109,819. * * * For each regulation or order, the schedule shows two amounts within the $839 to $27,455 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). * * *

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $109,819 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. * * *

* * * * *

Appendix B to Part 209—[Amended]

■ 4. In appendix B to part 209, amend footnote 1 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

PART 213—[AMENDED]

■ 5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 213.15 [Amended]

■ 6. In § 213.15, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix B to Part 213—[Amended]

■ 7. In appendix B to part 213, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 214—[AMENDED]

■ 8. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 31304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 214.5 [Amended]

■ 9. Amend § 214.5 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 214—[Amended]

■ 10. In appendix A to part 214, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 215—[AMENDED]

■ 11. The authority citation for part 215 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 215.7 [Amended]

■ 12. Amend § 215.7 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix B to Part 215—[Amended]

■ 13. In appendix B to part 215, amend footnote 1 as follows:
■ a. Remove the numerical amount "$16,000" and add in its place the numerical amount "$27,455"; and
■ b. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

PART 216—[AMENDED]

■ 14. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 216.7 [Amended]

■ 15. Amend § 216.7 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

PART 217—[AMENDED]

■ 16. The authority citation for part 217 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 217.5 [Amended]

■ 17. Amend § 217.5 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 217—[Amended]

■ 18. In appendix A to part 217, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 218—[AMENDED]

■ 19. The authority citation for part 218 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 218.9 [Amended]

■ 20. Amend § 218.9 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 218—[Amended]

■ 21. In appendix A to part 218, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 219—[AMENDED]

■ 22. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 219.9 [Amended]

■ 23. In § 219.9, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 219—[Amended]

■ 24. In appendix A to part 219, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 220—[AMENDED]

■ 25. The authority citation for part 220 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 220.7 [Amended]

■ 26. Amend § 220.7 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix C to Part 220—[Amended]

■ 27. In appendix C to part 220, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 221—[AMENDED]

■ 28. The authority citation for part 221 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 221.7 [Amended]

■ 29. Amend § 221.7 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix C to Part 221—[Amended]

■ 30. In appendix C to part 221, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 222—[AMENDED]

■ 31. The authority citation for part 222 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 222.11 [Amended]

■ 32. Amend § 222.11 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix H to Part 222—[Amended]

■ 33. In appendix H to part 222, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819"

PART 223—[AMENDED]

■ 34. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 223.7 [Amended]

■ 35. Amend § 223.7 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix B to Part 223—[Amended]

■ 36. In appendix B to part 223, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 224—[AMENDED]

■ 37. The authority citation for part 224 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 224.11 [Amended]

■ 38. In § 224.11, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 224—[Amended]

■ 39. In appendix A to part 224, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 225—[AMENDED]

■ 40. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 225.29 [Amended]

■ 41. Amend § 225.29 as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 225—[Amended]

■ 42. In appendix A to part 225, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 227—[AMENDED]

■ 43. The authority citation for part 227 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 227.9 [Amended]

■ 44. In § 227.9, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix G to Part 227—[Amended]

■ 45. In appendix G to part 227, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 228—[AMENDED]

■ 46. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 228.6 [Amended]

■ 47. In § 228.6, amend paragraph (a) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 228—[Amended]

■ 48. In appendix A to part 228, below the heading "GENERAL PROVISIONS," amend the "*Penalty*" paragraph by adding two sentences to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, effective August 1, 2016, the minimum penalty was raised from $650 to $839, the ordinary maximum penalty was raised from $25,000 to $27,455, and the aggravated maximum penalty was raised from $105,000 to $109,819. See Public Law 114–74, Sec. 701, November 2, 2015.

* * * * *

Appendix B to Part 228—[Amended]

■ 49. In appendix B to part 228, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 229—[AMENDED]

■ 50. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 229.7 [Amended]

■ 51. In § 229.7, amend paragraph (b) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix B to Part 229—[Amended]

■ 52. In appendix B to part 229, amend footnote 1 as follows:

■ a. Remove the numerical amount "$16,000" and add in its place the numerical amount "$27,455"; and

■ b. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819"

PART 230—[AMENDED]

■ 53. The authority citation for part 230 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 230.4 [Amended]

■ 54. In § 230.4, amend paragraph (a) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

PART 231—[AMENDED]

■ 55. The authority citation for part 231 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 231.0 [Amended]

■ 56. In § 231.0, amend paragraph (f) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 231—[Amended]

■ 57. In appendix A to part 231, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 232—[AMENDED]

■ 58. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 232.11 [Amended]

■ 59. In § 232.11, amend paragraph (a) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 232—[Amended]

■ 60. In appendix A to part 232, amend footnote 1 as follows:

■ a. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ b. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

PART 233—[AMENDED]

■ 61. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501–20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.11 [Amended]

■ 62. Amend § 233.11 as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 233—[Amended]

■ 63. In appendix A to part 233, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 234—[AMENDED]

■ 64. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 234.6 [Amended]

■ 65. In § 234.6, amend paragraph (a) as follows:

■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";

■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and

■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 234—[Amended]

■ 66. In appendix A to part 234, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 235—[AMENDED]

■ 67. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 235.9 [Amended]

■ 68. Amend § 235.9 as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix A to Part 235—[Amended]

■ 69. In appendix A to part 235, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 236—[AMENDED]

■ 70. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 236.0 [Amended]

■ 71. In § 236.0, amend paragraph (f) as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix A to Part 236—[Amended]

■ 72. In appendix A to part 236, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 237—[AMENDED]

■ 73. The authority citation for part 237 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114; Public Law 110–432, Div. A, Sec. 417; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 237.7 [Amended]

■ 74. In § 237.7, amend paragraph (a) as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix B to Part 237—[Amended]

■ 75. In appendix B to part 237, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 238—[AMENDED]

■ 76. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 238.11 [Amended]

■ 77. In § 238.11, amend paragraph (a) as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix A to Part 238—[Amended]

■ 78. In appendix A to part 238, amend footnote 1 as follows:
■ a. Remove the numerical amount “$16,000” and add in its place the numerical amount “$27,455”; and
■ b. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

PART 239—[AMENDED]

■ 79. The authority citation for part 239 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 239.11 [Amended]

■ 80. Amend § 239.11 as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix A to Part 239—[Amended]

■ 81. In appendix A to part 239, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 240—[AMENDED]

■ 82. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 240.11 [Amended]

■ 83. In § 240.11, amend paragraph (a) as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix A to Part 240—[Amended]

■ 84. In appendix A to part 240, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 241—[AMENDED]

■ 85. The authority citation for part 241 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.89.

§ 241.15 [Amended]

■ 86. In § 241.15, amend paragraph (a) as follows:
■ a. Remove the numerical amount “$650” and add in its place the numerical amount “$839”;
■ b. Remove the numerical amount “$25,000” and add in its place the numerical amount “$27,455”; and
■ c. Remove the numerical amount “$105,000” and add in its place the numerical amount “$109,819”.

Appendix B to Part 241—[Amended]

■ 87. In appendix B to part 241, amend footnote 1 by removing the numerical amount “$105,000” and adding in its place the numerical amount “$109,819”.

PART 242—[AMENDED]

■ 88. The authority citation for part 242 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 242.11 [Amended]

■ 89. In § 242.11, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 242—[Amended]

■ 90. In appendix A to part 242, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

PART 243—[AMENDED]

■ 91. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 243.7 [Amended]

■ 92. In § 243.7, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$100,000" and add in its place the numerical amount "$109,819".

Appendix to Part 243—[Amended]

■ 93. In appendix to part 243, amend footnote 1 by removing the numerical amount "$100,000" and adding in its place the numerical amount "$109,819".

PART 244—[AMENDED]

■ 94. The authority citation for part 244 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 244.5 [Amended]

■ 95. In § 244.5, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$100,000" and add in its place the numerical amount "$109,819".

PART 272—[AMENDED]

■ 96. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

§ 272.11 [Amended]

■ 97. In § 272.11, amend paragraph (a) as follows:
■ a. Remove the numerical amount "$650" and add in its place the numerical amount "$839";
■ b. Remove the numerical amount "$25,000" and add in its place the numerical amount "$27,455"; and
■ c. Remove the numerical amount "$105,000" and add in its place the numerical amount "$109,819".

Appendix A to Part 272—[Amended]

■ 98. In appendix A to part 272, amend footnote 1 by removing the numerical amount "$105,000" and adding in its place the numerical amount "$109,819".

Corey Hill,
Executive Director.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Step-by-Step Calculations To Determine Civil Monetary Penalty Updates: 2016

These calculations follow guidance by the Office of Management and Budget, M–16–06, "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," dated Feb. 24, 2016. In brief, the minimum civil monetary penalty (CMP) increases from $650 to $839, the ordinary maximum CMP increases from $25,000 to $27,455, and the aggravated maximum CMP increases from $105,000 to $109,819 under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Minimum CMP

The current minimum CMP was last adjusted by statute or regulation in 1992 ($500), other than for inflation. See Rail Safety Enforcement and Review Act, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992).

Step 1

Determine the year and amount that the maximum penalty level or the range of minimum and maximum penalties was established or last adjusted by statute or regulation (exclude any previous adjustments made under the Inflation Adjustment Act); then, identify the corresponding multiplier from Table A, Column B.[2]

a. = Year *1992* b. = Multiplier *1.67728* c. = Penalty Level or Range *$500*

Step 2

Use the applicable multiplier (b.) to multiply the penalty level or range (c.) and achieve the penalty level or range adjusted for inflation (d.). Round to the nearest dollar.

d. = (b.) × (c.) = Inflation-Adjusted Penalty Level or Range
$838.64 Rounded to the nearest dollar *$839*

Step 3

Identify the penalty level(s) in effect on November 2, 2015, including Inflation Adjustment Act increases.

e. = November 2, 2015, Penalty Level or Range *$650*

Step 4

Multiply the November 2, 2015 level(s) (e.) by 2.5 to achieve a 150 percent increase (f.). Round to the nearest dollar.

f. = (e.) × 2.5 = 150 percent increase *$1,625*
Rounded to the nearest dollar *$1,625*

Step 5

Compare the amounts of (d.) and (f.). If the maximum penalty level or range in (d.) is larger than the maximum penalty level or range in (f.), the 150 percent limit applies, and the penalty level or range in (f.) should be selected.

The new "catchup" penalty level is the lesser of (d.) or (f.): *$839*

This is the new maximum civil monetary penalty level (or range of minimum and maximum civil monetary penalty levels), which applies (apply) to any civil monetary penalties assessed on or after the effective date of the adjustment.

TABLE A—2016 CIVIL MONETARY PENALTY CATCH-UP ADJUSTMENT MULTIPLIER BY CALENDAR YEAR

[Select multiplier based on the latest year when the penalty level was established (originally enacted by Congress) or last adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act before November 2, 2015)]

A Year	B Multiplier
1992	1.67738
1993	1.63238
1994	1.59089
1995	1.54742
1996	1.50245
1997	1.47177
1998	1.45023
1999	1.41402
2000	1.36689
2001	1.33842
2002	1.31185
2003	1.28561
2004	1.24588
2005	1.19397
2006	1.17858
2007	1.13833
2008	1.09819
2009	1.10020
2010	1.08745
2011	1.05042
2012	1.02819
2013	1.01838

---

[2] Table A is provided below.

TABLE A—2016 CIVIL MONETARY PENALTY CATCH-UP ADJUSTMENT MULTIPLIER BY CALENDAR YEAR—Continued

[Select multiplier based on the latest year when the penalty level was established (originally enacted by Congress) or last adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act before November 2, 2015)]

A	B
Year	Multiplier
2014	1.00171
2015	1.00000

Ordinary Maximum CMP

The ordinary maximum CMP ($25,000) was last adjusted by statute or regulation in 2008. See RSIA of 2008, Public Law 110–342, Div. A, 122 Stat. 4848, (Oct. 16, 2008), Sec. 302; 73 FR 79698 (Dec. 30, 2008).

Step 1

Determine the year and amount that the maximum penalty level or the range of minimum and maximum penalties was established or last adjusted by statute or regulation (exclude any previous adjustments made under the Inflation Adjustment Act); then, identify the corresponding multiplier from Table A, Column B.

a. = Year *2008* b. = Multiplier *1.09819* c. = Penalty Level or Range *$25,000*

Step 2

Use the applicable multiplier (b.) to multiply the penalty level or range (c.) and achieve the penalty level or range adjusted for inflation (d.). Round to the nearest dollar.

d. = (b.) × (c.) = Inflation-Adjusted Penalty Level or Range *$27,454.75* Rounded to the nearest dollar *$27,455*

Step 3

Identify the penalty level(s) in effect on November 2, 2015, including Inflation Adjustment Act increases.

e. = November 2, 2015, Penalty Level or Range *$25,000*

Step 4

Multiply the November 2, 2015 level(s) (e.) by 2.5 to achieve a 150 percent increase (f.). Round to the nearest dollar.

f. = (e.) × 2.5 = 150 percent increase *$62,500* Rounded to the nearest dollar *$62,500*

Step 5

Compare the amounts of (d.) and (f.). If the maximum penalty level or range in (d.) is larger than the maximum penalty level or range in (f.), the 150 percent limit applies, and the penalty level or range in (f.) should be selected.

The new "catchup" penalty level is the lesser of (d.) or (f.): *$27,455*

This is the new maximum civil monetary penalty level (or range of minimum and maximum civil monetary penalty levels), which applies (apply) to any civil monetary penalties assessed on or after the effective date of the adjustment.

Aggravated Maximum CMP

The aggravated maximum CMP ($100,000) was last adjusted by statute or regulation in 2008. See RSIA of 2008, Public Law 110–342, Div. A, 122 Stat. 4848, (Oct. 16, 2008), Sec. 302; 73 FR 79698 (Dec. 30, 2008).

Step 1

Determine the year and amount that the maximum penalty level or the range of minimum and maximum penalties was established or last adjusted by statute or regulation (exclude any previous adjustments made under the Inflation Adjustment Act); then, identify the corresponding multiplier from Table A, Column B.

a. = Year *2008* b. = Multiplier *1.09819* c. = Penalty Level or Range *$100,000*

Step 2

Use the applicable multiplier (b.) to multiply the penalty level or range (c.) and achieve the penalty level or range adjusted for inflation (d.). Round to the nearest dollar.

d. = (b.) × (c.) = Inflation-Adjusted Penalty Level or Range *$109,819* Rounded to the nearest dollar *$109,819*

Step 3

Identify the penalty level(s) in effect on November 2, 2015, including Inflation Adjustment Act increases.

e. = November 2, 2015, Penalty Level or Range *$105,000*

Step 4

Multiply the November 2, 2015 level(s) (e.) by 2.5 to achieve a 150 percent increase (f.). Round to the nearest dollar.

f. = (e.) × 2.5 = 150 percent increase *$262,500* Rounded to the nearest dollar *$262,500*

Step 5

Compare the amounts of (d.) and (f.). If the maximum penalty level or range in (d.) is larger than the maximum penalty level or range in (f.), the 150 percent limit applies, and the penalty level or range in (f.) should be selected.

The new "catchup" penalty level is the lesser of (d.) or (f.): *$109,819*

This is the new maximum civil monetary penalty level (or range of minimum and maximum civil monetary penalty levels), which applies (apply) to any civil monetary penalties assessed on or after the effective date of the adjustment.

[FR Doc. 2016–15641 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 81, No. 127
Friday, July 1, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2015–0050]

RIN 0579–AE21

Importation of Bone-In Ovine Meat From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of bone-in ovine meat from Uruguay. Based on the evidence in a risk assessment that we have prepared, we believe that bone-in ovine meat can safely be imported from Uruguay provided certain conditions are met. This proposal would provide for the importation of bone-in ovine meat from Uruguay into the United States, while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: We will consider all comments that we receive on or before August 30, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0050.*
- *Postal Mail/Commercial Delivery*: Send your comment to Docket No. APHIS–2015–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0050* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Kordick, Import Risk Analyst, Regional Evaluation Services, National Import Export Services, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC; (919) 855–7733; *Stephanie.K.Kordick@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations contains criteria for recognition by the Animal and Plant Health Inspection Service (APHIS) of foreign regions as free of rinderpest or free of both rinderpest and FMD. Section 94.11 restricts the importation of ruminants and swine and their meat and certain other products from regions that are declared free of rinderpest and FMD but that nonetheless present a disease risk because of the regions' proximity to or trading relationships with regions affected by rinderpest or FMD. Regions APHIS has declared free of FMD and/or rinderpest, and regions declared free of FMD and rinderpest that are subject to the restrictions in § 94.11, are listed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.*

APHIS considers rinderpest or FMD to exist in all regions of the world not listed as free of those diseases on the Web site. APHIS considers Uruguay to be free of rinderpest. However, APHIS does not consider Uruguay to be free of FMD because Uruguay vaccinates cattle against FMD. With few exceptions, the regulations prohibit the importation of fresh (chilled or frozen) meat of ruminants or swine that originates in or transits a region where FMD is considered to exist. One such exception is beef and ovine meat from Uruguay and specified regions of Argentina and Brazil. The regulations in § 94.29 allow the importation of fresh beef and ovine meat into the United States from these regions provided that the following additional conditions have been met:

- The meat is beef from animals born, raised, and slaughtered in the exporting regions of Argentina or Brazil, or is beef or ovine meat from animals born, raised, and slaughtered in Uruguay.
- FMD has not been diagnosed in the exporting region within the previous 12 months.
- The meat comes from bovines or sheep that originated from premises where FMD had not been present during the lifetime of any bovines or sheep slaughtered for the export of beef and ovine meat to the United States.
- The meat comes from bovines or sheep that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.
- The meat comes from bovines or sheep that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.
- The meat consists only of bovine or ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. The bovine and ovine parts that may not be imported include all parts of the head, feet, hump, hooves, and internal organs.
- All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat.
- The meat has not been in contact with meat from regions other than those listed in the regulations as free of rinderpest and FMD.
- The meat comes from carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 24 hours after slaughter and that reached a pH of below 6.0 in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach less than 6.0 may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of less than 6.0 after 48

hours, the meat from the carcass may not be exported to the United States.

- An authorized veterinary official of the government of the exporting region certifies on the foreign meat inspection certificate that the above conditions have been met.
- The establishment in which the bovines and sheep are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

In response to an official request from the Government of Uruguay that APHIS allow the importation of fresh (chilled or frozen) bone-in ovine meat into the United States from Uruguay, we have conducted a risk analysis of their proposed select lamb program, which can be viewed on the *Regulations.gov* Web site or in our reading room.[1] The Government of Uruguay has proposed an exemption from the FMD deboning mitigation required in § 94.29(g) for ovine meat from a select group of lambs that would be subject to additional mitigations, including individual animal testing for FMD virus, individual animal identification with both visual and radio frequency identification (RFID) ear tags, and segregation of selected lambs from other FMD-susceptible animals following testing. For the risk analysis, we evaluated information provided by Uruguay's Ministry of Livestock, Agriculture, and Fisheries (MGAP), reviewed scientific literature, and conducted a site visit to the proposed exporting region. We concluded that Uruguay possesses the necessary barriers to introduction of FMD, as well as the ability to detect an introduction, prevent its spread, and eradicate FMD, should it occur. We further concluded that, because of the measures in place in Uruguay, the likelihood that lambs selected for exemption from the deboning requirement would be exposed to FMD from susceptible Uruguayan livestock or wildlife is very low. When subjected to the proposed select lamb measures, including multiple tests for FMD virus, individual identification, and segregation in a protected facility, followed by maturation of carcasses, we conclude that the likelihood that bone-in meat derived from the selected lambs would be contaminated with FMD virus is negligible. Based on the evidence documented in our risk assessment, we believe that fresh (frozen or chilled) bone-in ovine meat can be safely imported from Uruguay, provided certain conditions are met. Accordingly, we are proposing to amend the regulations in § 94.29 to allow the importation of fresh bone-in ovine meat from Uruguay under certain conditions.

Risk Analysis

Drawing on information provided by the Government of Uruguay and observations from our site visit, we have conducted a risk analysis that evaluates the likelihood of entry of FMD as a result of importing fresh (frozen or chilled) bone-in ovine meat from Uruguay derived from lambs subjected to the measures included in Uruguay's proposed select lamb program. A summary of the evaluation is discussed below.

The risk analysis was conducted in accordance with World Organization for Animal Health (OIE) standards for import risk analysis. Under OIE standards, the first step of an import risk analysis is hazard identification, which is the identification of pathogenic agents associated with the commodity that could result in adverse consequences if imported with the commodity. FMD virus is the only hazard considered in this analysis.

Following the hazard identification step, a risk assessment is conducted. The risk assessment evaluates the likelihood of entry, establishment, and spread of the specified hazard as a result of importing the commodity, and the consequences of exposure to the hazard. It usually consists of four parts: Entry assessment, exposure assessment, consequence assessment, and risk estimation. However, if the likelihood of entry of, or exposure to, the hazard is determined to be negligible, the assessment may be concluded. Because the entry likelihood for the commodity under evaluation in this assessment was determined to be negligible, exposure and consequence assessments were not necessary and the risk assessment was concluded with an estimation of negligible risk.

Based on our analysis, we have determined that fresh (frozen or chilled) bone-in ovine meat can be safely imported into the United States from Uruguay under certain conditions.

Entry Assessment

The entry assessment estimates the likelihood of an imported commodity being infected or contaminated with a hazard. For the purpose of our risk analysis, entry refers to the introduction of live FMD virus into the United States through imports of fresh, maturated ovine meat from Uruguayan lambs that have not been vaccinated against FMD and have been subjected to the proposed mitigations as described below, in addition to restrictions specified in 9 CFR 94.29 with the exception of deboning.

The entry assessment is divided into two sections. First, we conducted a review of Uruguay's overall FMD status and FMD program. This review was based on APHIS' 2002 and 2007 evaluations in combination with updated information from 2014. Second, we provide additional information about, and an evaluation of the proposed select lamb program.

Previous Evaluations of Uruguay's FMD Program

APHIS has evaluated Uruguay's FMD control measures in beef (in 2002) and ovine meat (in 2007). As part of those evaluations, we reviewed and analyzed various components essential to the exclusion, detection, and control of FMD for their ability to constitute an effective FMD program. This program includes entry controls at Uruguay's border, national surveillance in susceptible species, traceability systems, as well as other measures. As a result of those evaluations, and with the inclusion of updated information from 2014, we concluded that Uruguay has the veterinary and regulatory infrastructure to adequately monitor and control the possible incursion of FMD.

Proposed Select Lamb Program

The Government of Uruguay has requested an exemption from the FMD deboning mitigation required in 9 CFR 94.29(g) for ovine meat. They have piloted and presented to APHIS an alternative that involves three main elements: Individual animal testing for FMD, individual identification (visual and RFID) that is part of the national traceability system, and separation of select lambs from other FMD-susceptible animals. This program exists within the framework of Uruguay's national FMD program, which includes entry controls at Uruguay's borders, routine serologic surveillance, clinical surveillance, an effective movement and traceability system, a competent diagnostic laboratory, vaccination of its cattle population, a robust official veterinary services agency with knowledgeable personnel, and an effective preparedness and response system for FMD.

Uruguay's animal health authority, the General Directorate of Livestock Services (DGSG), is responsible for general oversight and auditing of the select lamb program and also has a direct role in some aspects of the program, including approval of source farms, application of identification devices, and collection and submission of blood for FMD testing. However, officials with the Uruguayan Wool Secretariat (SUL) are responsible for most of the day-to-day activities at the facility where the select lambs are housed.

---

[1] Instructions on accessing *Regulations.gov* and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Uruguay would only be permitted to export bone-in ovine meat from select lambs provided that FMD is not introduced into the country and the rest of the requirements in § 94.29 are met.

Sourcing of Select Lambs

Only sheep that have never been vaccinated against FMD would be considered for participation in the select lamb program. Although Uruguay vaccinates its cattle population against FMD as part of a nationwide systematic campaign, vaccination of sheep has been prohibited in Uruguay since 1988.

Source farms for the select lamb program are member establishments of SUL. They must maintain records demonstrating a history of good production practices with good animal health standards, animal welfare standards, and environmental measures. Only a few farms are used to source lambs for each season. Lambs are purchased from the farms by SUL. Once SUL has selected the source farms, they inform DGSG and request approval for movement to the select lamb facility. DGSG verifies that there are no movement restrictions or animal health concerns in the proposed source farms. If approved, DGSG registers the farms as providers to the select lamb facility in Uruguay's Animal Health Information System (SISA). SISA is a comprehensive electronic database that incorporates data from public and private sources at the local, regional, and national levels.

Requiring DGSG approval of source farms and only selecting farms with good animal health and welfare standards reduces the likelihood that FMD is present in source flocks for the select lamb facility. In combination with national FMD control measures, including routine national serosurveillance, awareness programs and notification requirements for FMD, and import controls at Uruguay's border, the likelihood that FMD virus-infected lambs are selected for inclusion in the proposed program is very low.

Identification of Select Lambs

Official, unique identification tags (visual tag in the left ear and RFID tag in the right ear) are applied to all select lambs before entry to the select lamb facility. The identification number of each lamb is verified at multiple steps within the select lamb program. The tags, in conjunction with information captured in Uruguay's National Livestock Information System (SNIG) and SISA, provide for traceability of lambs and ensure their health status from their place of birth to slaughter.

Applying individual identification tags to the select lambs helps provide assurance that only FMD test-negative lambs are ultimately exempted from the deboning requirement. The unique identification number of the select lambs is linked to their individual FMD test status in SISA, allowing verification of each animal's health status upon entry into the select lamb facility and again at the slaughter plant. Incorporation of the animals' identification tag numbers into SNIG also helps ensure that the final product can be traced back to the source farm of each lamb exempted from the deboning requirement.

Testing of Select Lambs

Individual testing of select lambs for antibodies to FMD virus is done prior to movement off the source farm. Veterinarians with the local animal health division of DGSG collect blood samples from select lambs at the source farm, apply identification tags, and record data in SNIG. Samples are sent to the central laboratory of the Veterinary Laboratories Division of DGSG for FMD testing. If all tests of select lambs in the source flock are negative, the lambs would move to the select lamb facility. If any animal were to test positive to the screening test, the entire group of lambs would be held while follow-up testing is conducted in the test-positive animals. If these follow-up test results are negative, the remaining lambs would be released to the select lamb facility; however, lambs that tested positive to the screening test (but negative on subsequent testing) would not be allowed to move to the facility. If the follow-up test is positive, then movement of any animals off of the source farm would be prohibited and an investigation conducted to determine if there is evidence of FMD virus circulation within the source farm. Test results are reported within approximately 1 day of submission. Movement of FMD-test negative lambs to the select lamb facility must occur within 7 days after testing.

Following FMD sample collection and application of ear tags, select lambs are isolated from other animals at the source farm prior to movement to the select lamb facility. The lambs remain segregated from other FMD-susceptible animals from sampling through slaughter and after slaughter their carcasses remain in separate channels throughout processing.

The sensitivity of the FMD antibody test used to screen select lambs prior to entry to the segregated facility is greater than 99 percent. Because the lambs originate from a small number of farms, with several lambs selected from each farm, and due to the highly contagious nature of FMD, antibodies to FMD virus are expected to be present in more than one select lamb if the source farm were affected, increasing the likelihood of detection. Because cattle are vaccinated for FMD in Uruguay and routine surveillance for FMD is conducted in cattle and sheep, it is unlikely that source flocks would be affected with FMD, increasing the likelihood further that lambs testing negative to the screening test truly are negative.

After the lambs have entered the select lamb facility, the flock is subjected to a second round of testing at the herd level, using the same tests for screening and confirmation as in the individual testing. This is done to increase confidence that select lambs were not exposed to FMD on the source farm shortly before initial testing, when incubating FMD infection prior to production of antibodies might result in a false negative response to the first round of testing. Because it is possible that the production of antibodies to FMD virus following exposure of susceptible animals may take several days, the herd level test would be performed no sooner than 28 days after entry of the lambs to the select lamb facility, to allow time for production of antibodies in potentially infected animals. The second round of testing would have to be conducted on a sample of lambs large enough to allow for detection of FMD if it were present in at least 5 percent of the animals in the flock, at a confidence level of 95 percent. As above, because of the highly contagious nature of FMD, it is likely that the disease would spread within the flock to greater than 5 percent of the lambs if FMD were introduced from one of the source flocks; therefore, this level of sampling should provide for an additional level of safety in assuring that FMD is not present in the select lamb population.

Management of Lambs Within the Select Lamb Facility

The select lamb facility is located in Cerro Colorado, in the interior of Uruguay. The facility is owned by SUL and has been used for research in the past for projects such as crossbreeding for more productive wool and meat-type sheep and improved fertility.

The facility is approximately 315 hectares in size and is surrounded by a double wire fence system, with 5 feet separating the 2 fences. The external fence is approximately 6 feet high, and the internal fence is approximately 4 feet high and electrified. The area around the fence line is clear cut and herbicide is regularly applied along the fence line. The voltage of the internal fence is checked daily; if fewer than 3,000 volts are measured, the entire fence line is checked and the low-voltage problem is identified and resolved. The property is divided into 30 pastures separated by single fencing. Each pasture can hold approximately 300 lambs.

There is a single point of entry into the facility, allowing for application of biosecurity measures. Authorization and registration is required for entry of all animals, personnel, vehicles, and equipment. Tires and undercarriages of vehicles are disinfected upon entry in the facility. Visitors are required to use footbaths and wear coveralls and booties in order to access the facility.

The property has facilities dedicated to working with sheep. There are facilities for loading and unloading of animals, isolation, introduction of material and equipment, storage of food and veterinary products, waste and carcass disposal, water supply, etc. The isolation facilities are used for each newly introduced group of select lambs. Lambs from different source flocks may enter the facility over a period of a few days; however, the facility operates on an all-in, all-out basis, and once the lambs within a production group have been assembled, the facility is closed to new entries.

Two employees of SUL work exclusively at the facility, evaluating the lambs and checking the fence line on a daily basis. They receive training in animal health, hygiene, and biosecurity. Technical supervision is provided by a DGSG-accredited veterinarian employed by SUL and dedicated to the facility.

Once every 30 days each lamb is weighed and receives an individual visual inspection. The employees check that the ear tags are in place, and re-sort the lambs based on changes in weight, if necessary. If lambs are moved to a different pasture, the SUL veterinarian is informed and he or she, in turn, notifies DGSG of the change so that SNIG can be updated.

The select lambs are sheared 1 month prior to slaughter. Shearing equipment is dedicated to the facility and remains on-site. All work vehicles and working animals (two herding dogs, one guard dog, and one horse) used within the facility remain on the facility.

Each lamb that dies prior to slaughter is necropsied by the SUL veterinarian. At the time of our site visit in 2014, the cohort of lambs at the facility had less than 3 percent mortality. Mortality is usually due to *Pasteurella* pneumonia and weather-related issues. If there is any question or concern about the diagnosis, the carcass is sent to the regional DGSG laboratory for additional evaluation.

There are no livestock adjacent to the facility; surrounding farms are mostly used for timber. If movement of livestock into these areas were proposed, MGAP would not allow it (they have the authority and ability to control all livestock movement in the country).

The select lamb facility provides housing for the lambs in a manner that prevents commingling with other livestock. Facility biosecurity measures, particularly the electrified fencing, reduce, but do not eliminate the potential for contact with wild animals. Free-roaming deer and peccaries, which are FMD-susceptible animals, are present in Uruguay. Because of measures in Uruguay to prevent the entry of FMD into the country and to detect it if it were present, APHIS considers the facility's biosecurity measures to be adequate to preserve the identity, traceability, and health status of the select lambs. If FMD were to be detected anywhere in Uruguay, meat exports from animals housed in the facility would be halted immediately. The intense management practices at the select lamb facility would also allow for ample opportunity to detect signs of FMD in the select lambs, even if the signs were subtle.

Processing of Select Lambs at the Slaughter Facility

All lambs at the select lamb facility are processed at the San Jacinto slaughter plant. The plant has two separate slaughter lines, one for beef and one for sheep. Staff at the plant are trained to work both lines, but only one line—either beef or sheep—is run per day. The sheep capacity is 4,200 per shift. All lambs from the select lamb facility are processed in a single day and no other animals are processed at the plant on that day. This significantly reduces the possibility that a non-select lamb would be exempted from deboning. Additionally, the only sheep in Uruguay that have ear tag identification devices are the select lambs, and each ear tag is electronically read at the slaughter plant to ensure it belongs to a select lamb that has been housed at the SUL facility and tested negative for FMD.

Lambs in each lot are assigned a sequential number at the slaughter plant corresponding to the order of slaughter. This number and the date of slaughter are linked to the animals' individual tag number to allow trace back of each carcass and the products produced from it to the farm of origin and test results of the lamb.

When the select lambs arrive at the plant, the accompanying transport documents are examined before off-loading occurs, and seals are inspected by DGSG officials to ensure that they are intact and match the paperwork. Then the lambs are unloaded, checked to ensure ear tags are in place, and moved into pens where ante-mortem inspection is conducted. If any physical abnormalities are observed, a notation is made on the pen card. Ante-mortem inspection is relatively cursory; however, post-mortem inspection is much more thorough, with up close visual inspection of each lamb's oral cavity, interdigital spaces, and coronary band. Any animals that die prior to slaughter are necropsied on-site by an official veterinarian and disposed of through rendering. If any discrepancies with respect to the identification of the select lambs are noted, all of the meat from the entire lot would be diverted to the domestic market or would be required to be deboned prior to export.

Following slaughter, carcasses of select lambs are kept in chilling rooms with only carcasses of other select lambs for the duration of maturation. To ensure that the temperature inside the chilling room remains within the desired range throughout the maturation process, the chamber temperature is measured several times: When staff begins loading the carcass into the chamber, when loading has been completed, and every 30 minutes until the chamber is opened after 24 hours have passed. All temperature data points are captured on a chart that becomes part of the official record. If the temperature falls outside of the required zone (between 4 and 10 °C) at any point in the process, all of the carcasses in the chamber are rejected for export and redirected to domestic consumption.

At the conclusion of the maturation period, a DGSG veterinary inspector checks the pH of the *longissimus dorsi* muscle of every carcass. If the pH is 6.0 or higher, the carcass is rejected for export. The pH meters are calibrated daily by the plant's internal laboratory.

Following processing, all meat products derived from the select lambs are affixed with labels identifying those products as having been derived from select lambs that are exempted from the deboning requirement. The labels contain sufficient information to be able to trace each package of meat to the date of slaughter and premises of origin of the animal from which it was derived.

Requiring identification of select lambs with uniquely numbered ear tags that are linked to the FMD test history and status of the lambs in the SISA database helps ensure that only meat from select lambs will be exempted from the deboning requirement prior to export to the United States. Prohibiting slaughter of other animals on the day that select lambs are processed at the San Jacinto slaughter plant will also contribute to this assurance. Additional procedures, such as the requirement that lambs pass a clinical examination from an accredited veterinarian prior to shipment to the slaughter plant and receive a thorough post-mortem examination by a DGSG veterinarian at the plant, and that the carcasses of the select lambs undergo maturation, which is verified through pH evaluation of every carcass, routine temperature checks in the maturation chamber, and daily checks of pH meters, further reduce the likelihood that meat produced from select lambs and exported to the United States would be contaminated with FMD virus to a negligible level. Accordingly, we are proposing to amend the regulations in § 94.29 to allow the importation of fresh bone-in ovine meat from Uruguay under certain conditions.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is proposing to exempt ovine meat imported from Uruguay from the deboning requirement for a select group of lambs subjected to additional risk mitigating measures. These measures include testing for FMD with negative results, individual animal identification (both visual and radio frequency) and traceability, and segregation of selected lambs from FMD-susceptible animals following testing.

In 2013, the Food and Agriculture Organization of the United Nations estimated the sheep population in Uruguay to be 7.5 million head, generating income both from the sale of wool and sheep meat. With the exception of dairy farms, most of the livestock farms in Uruguay are mixed, running both beef cattle and sheep. There are approximately 15,000 farms with sheep, but income from sheep is only a minor proportion of total income.

Uruguay has requested the exemption from the deboning requirement specifically to export rack of lamb, which includes the rib bones, to the United States. These cuts are higher quality and command a higher price than lamb meat which has been deboned as currently required.

Given the additional risk mitigating measures, Uruguay expects to export bone-in meat from up to 6,000 lambs per year. These lambs would be between 6–8 months of age at the time of slaughter, producing a total carcass weight of lamb meat of about 100 tons per year. While all meat from these lambs would be eligible for import under this rule, the focus would likely be on rack of lamb, which represents about one quarter of this weight, or about 25 tons.

Over the last 3 years, the United States has imported an average of about 46,000 tons of bone-in lamb meat annually, valued at over $419 million. The vast majority of these imports have been from Australia and New Zealand, with small quantities from Canada, Chile, and Iceland. Annual imports of 100 tons of bone-in lamb from Uruguay would be equivalent to less than 3⁄10 of 1 percent of total annual bone-in lamb imports into the United States.

Given the very small quantity of bone-in lamb meat expected to be imported from Uruguay, this action would not have a significant economic impact on domestic producers or importers, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0050. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS' regulations in § 94.29 place certain restrictions on the importation of ovine meat from Uruguay into the United States. APHIS is proposing to amend § 94.29 to expand the kind of ovine meat allowed into the United States to include bone-in lamb. Under these regulations, APHIS must collect information, prepared by an authorized certified official of the Government of Uruguay, certifying that specific conditions for importation have been met. In addition, there is an animal identification and testing requirement.

APHIS is asking OMB to approve its use of these information collection activities to ensure that ovine products from Uruguay pose negligible risk of introducing FMD among other diseases into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Federal animal health authorities in Uruguay and exporters of sheep and ovine meat from Uruguay to the United States.

Estimated annual number of respondents: 6,006.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 18,006.

Estimated total annual burden on respondents: 9,009 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In 94.29, paragraph (g) is revised to read as follows:

§ 94.29 Restrictions on importation of fresh (chilled or frozen) beef and ovine meat from specified regions.

* * * * *

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat; except that bone-in ovine meat from Uruguay may be exported to the United States under the following conditions:

(1) The meat must be derived from select lambs that have never been vaccinated for FMD;

(2) The select lambs must be maintained in a program approved by the Administrator. Lambs in the program must:

(i) Be segregated from other FMD-susceptible livestock at a select lamb facility operated under the authority of the national veterinary authority of Uruguay;

(ii) Be subjected to an FMD testing scheme approved by the Administrator; and

(iii) Be individually identified with official unique identification that is part of a national traceability system sufficient to ensure that only the products of select lambs meeting all required criteria are exempt from the deboning requirement.

(3) Select lambs and their products must not be commingled with other animals and their products within the slaughter facility.

* * * * *

Done in Washington, DC, this 24th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–15625 Filed 6–30–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7420; Directorate Identifier 2015–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FAN JET FALCON airplanes; Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; and MYSTERE–FALCON 50 airplanes. This proposed AD was prompted by a report that, during approach for landing, the main entry door detached from an airplane. This proposed AD would require a one-time functional test or check of the main entry door closure and warning system, and applicable door closing inspections, adjustments, and operational tests, and corrective actions if necessary. We are proposing this AD to detect and correct defective crew/passenger doors. Such a condition could result in the in-flight opening or detachment of the crew/passenger door, which could result in loss of control of the airplane and injury to persons on the ground.

DATES: We must receive comments on this proposed AD by August 15, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7420; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7420; Directorate Identifier 2015–NM–017–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0007, dated January 15, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Dassault Aviation Model FAN JET FALCON airplanes; Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; and MYSTERE–FALCON 50 airplanes. The MCAI states:

> During approach for landing, a Mystère-Falcon 20–X5 lost the main entrance door [MED] at an altitude of 7,000 feet. The flight crew maintained control of the aeroplane to land uneventfully. The results of the preliminary technical investigations concluded that the cause of this event could be either a broken cable, or an unlocked safety catch, associated with one or two deficient micro switches.
>
> This condition, if not detected and corrected, could lead to in-flight opening and/or detachment of the Crew/Passenger door, possibly resulting in loss of control of the aeroplane, and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Dassault Aviation issued Service Bulletins (SB) F20–789, F200–133 and MF50–531, providing instructions for inspection/adjustment, as well as an operational test of the Crew/Passenger door closure.
>
> For the reasons described above, this [EASA] AD requires a one-time accomplishment of a functional test/check of the MED closure/warning system. It also requires [a general visual] inspection and operational test of the Crew/Passenger door [including the control and latching mechanisms] and, depending on findings, applicable corrective actions.

Corrective actions include adjusting the telescopic rod bolts on the door until the clearance between the lower part of the door and the fuselage is within the specified tolerances. The corrective actions for the control and latching mechanisms include adjusting components and replacing damaged components (including pull latches, microswitches, pulleys, and cables). Signs of damage include cracks, corrosion, wear, and distortion.You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7420.

Related Service Information Under 1 CFR Part 51

We received the following service information.

- Dassault Service Bulletin F20–789, also referred to as 789, dated December 9, 2014.
- Dassault Service Bulletin F50–531, also referred to as 531, dated December 9, 2014.
- Dassault Service Bulletin F200–133, also referred to as 133, dated December 9, 2014.

The service information describes procedures for inspections, adjustments, and operational tests of certain doors and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 392 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $133,280, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2016–7420; Directorate Identifier 2015–NM–017–AD.

(a) Comments Due Date

We must receive comments by August 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Dassault Aviation airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD, all airplanes.

(1) Model FAN JET FALCON airplanes.

(2) Model FAN JET FALCON SERIES C, D, E, F, and G airplanes.

(3) Model MYSTERE–FALCON 200 airplanes.

(4) Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes.

(5) Model MYSTERE–FALCON 50 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report that, during approach for landing, the main entry door detached from an airplane. We are issuing this AD to detect and correct defective crew/passenger doors. Such a condition could result in the in-flight opening or detachment of the crew/passenger door, which could result in loss of control of the airplane and injury to persons on the ground.

(f) Compliance

Comply with this AD within the compliance times specified.

(g) Main Entry/Passenger/Crew Door Check or Functional Test

Within 65 days after the effective date of this AD, unless done within 6 months before the effective date of this AD, do the applicable functional test or door lock check specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, and do all applicable corrective actions, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). Do all applicable corrective actions before further flight.

(1) For Model FAN JET FALCON airplanes; Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: A functional test of the passenger/crew door warning system.

(2) For Model MYSTERE–FALCON 200 airplanes: A check of the door locking indicator system.

(3) For Model MYSTERE–FALCON 50 airplanes: A check of the door lock indication.

(h) Main Entry/Passenger/Crew Door Closing Inspections, Adjustments, and Operational Tests and Corrective Actions

Within 330 flight hours or 13 months, whichever occurs first after the effective date of this AD, unless already done: Do the applicable door closing inspections, adjustments, and operational tests, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Do all applicable corrective actions before further flight.

(1) For Model FAN JET FALCON airplanes; Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Dassault Service Bulletin F20–789, also referred to as 789, dated December 9, 2014.

(2) For Model MYSTERE–FALCON 200 airplanes: Dassault Service Bulletin F200–133, also referred to as 133, dated December 9, 2014.

(3) For Model MYSTERE–FALCON 50 airplanes: Dassault Service Bulletin F50–531, also referred to as 531, dated December 9, 2014.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0007, dated January 15, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7420.

(2) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 21 2016.

Dorr Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15290 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7421; Directorate Identifier 2015–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900) airplanes, and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that wear and possible leakage of the high-pressure seal in the cylinder of the No. 3 hydraulic system

reservoir could occur and prevent the system from reaching normal operating pressure. This proposed AD would require repetitive operational checks for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, and corrective actions if necessary. We are proposing this AD to detect and correct a malfunctioning temperature indication of the No. 3 hydraulic system. High hydraulic fluid temperature combined with a temperature transducer malfunction could result in unannunciated overheating of the hydraulic system and consequent ignition sources inside the fuel tank, which, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 15, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:*
- Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7421; Directorate Identifier 2015–NM–145–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–27, dated September 14, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900) airplanes; and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> It was discovered that the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir with P/N 960450–1 could wear and leak. This can cause high hydraulic fluid temperature and/or prevent the system from reaching normal operating pressure. High hydraulic fluid temperature, in combination with a temperature transducer malfunction, could result in an unannunciated overheat of the hydraulic system that could result in a potential ignition source within the fuel system.
>
> This [Canadian] AD mandates the repetitive operational check of the hydraulic system No. 3 fluid temperature indication as an interim mitigating action.

Required actions include repeating any operational check that fails until the operational check passes. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–29–018, Revision A, dated October 13, 2015. The service information describes procedures for performing an operational check for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 509 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $43,265, or $85 per airplane.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2016–7421; Directorate Identifier 2015–NM–145–AD.

(a) Comments Due Date

We must receive comments by August 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, certificated in any category, equipped with No. 3 hydraulic system reservoir having part number 960450–1.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), having serial numbers 10002 through 10999 inclusive.

(2) Model CL–600–2D24 (Regional Jet Series 900) airplanes, having serial numbers 15001 through 15990 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, having serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by a determination that wear and possible leakage of the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir could occur. We are issuing this AD to detect and correct a malfunctioning temperature indication of the No. 3 hydraulic system. High hydraulic fluid temperature combined with a temperature transducer malfunction could result in un-annunciated overheating of the hydraulic system and consequent ignition sources inside the fuel tank, which, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Operational Check and Repair, if Necessary

Within 660 flight hours or 4 months after the effective date of this AD, whichever occurs first: Perform an operational check for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–018, Revision A, dated October 13, 2015. If the operational check fails, before further flight, do applicable corrective actions and repeat the operational check and applicable corrective actions until the operational check passes. Repeat the operational check thereafter at intervals not to exceed 660 flight hours or 4 months, whichever occurs first.

(h) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–29–018, dated June 25, 2015, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–27, dated September 14, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 21, 2016.

Dorr Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15289 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6985; Airspace Docket No. 16–AGL–16]

Proposed Amendment of Class E Airspace for the Following Illinois Towns; Carmi, IL; De Kalb, IL; Harrisburg, IL; Kewanee, IL; Litchfield, IL; Paris, IL; and Taylorville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Carmi Municipal Airport, Carmi, IL; De Kalb Taylor Municipal Airport, De Kalb, IL; Harrisburg-Raleigh Airport, Harrisburg, IL; Kewanne Municipal Airport, Kewanne, IL; Litchfield Municipal Airport, Litchfield, IL; Edgar County Airport, Paris, IL; and Taylorville Municipal Airport, Taylorville, IL. Decommissioning of non-directional radio beacons (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action would also update the geographic coordinates of Carmi Municipal Airport, De Kalb Taylor Municipal Airport, Harrisburg-Raleigh Airport, Litchfield Municipal Airport, Edgar County Airport, and Taylorville Municipal Airport to coincide with the FAAs aeronautical database.

DATES: Comments must be received on or before August 15, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2016–6985; Airspace Docket No. 16–AGL–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Carmi Municipal Airport, Carmi, IL; De Kalb Taylor Municipal Airport, De Kalb, IL; Harrisburg-Raleigh Airport, Harrisburg, IL; Kewanne Municipal Airport, Kewanne, IL; Litchfield Municipal Airport, Litchfield, IL; Edgar County Airport, Paris, IL; and Taylorville Municipal Airport, Taylorville, IL.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6985/Airspace Docket No. 16–AGL–16." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document, as well as recently published rulemaking documents, may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at the following airports:

Within a 6.4-mile radius of Carmi Municipal Airport, Carmi, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database; Within a 6.8-mile radius of De Kalb Taylor Municipal Airport, De Kalb, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database; Within a 6.5-mile radius of Harrisburg-Raleigh Airport, Harrisburg, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database; Within a 6.5-mile radius of Kewanne Municipal Airport, Kewanne, IL; Within a 6.7-mile radius of Litchfield Municipal Airport, Litchfield, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database; Within a 6.4-mile radius of Edgar County Airport, Paris, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database; and Within a 6.5-mile radius of Taylorville Municipal Airport, Taylorville, IL, and updating the geographic coordinates of this airport to coincide with the FAAs aeronautical database. These airspace reconfigurations are necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV standard instrument approach procedures at the above airports. Controlled airspace is necessary for the safety and management of IFR operations at these airports.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Carmi, IL [Amended]

Carmi Municipal Airport, IL
(Lat. 38°05′22″ N., long. 88°07′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Carmi Municipal Airport.

* * * * *

AGL IL E5 De Kalb, IL [Amended]

De Kalb Taylor Municipal Airport, IL
(Lat. 41°56′02″ N., long. 88°42′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the De Kalb Taylor Municipal Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace area.

* * * * *

AGL IL E5 Harrisburg, IL [Amended]

Harrisburg-Raleigh Airport, IL
(Lat. 37°48′41″ N., long. 88°33′016″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Harrisburg-Raleigh Airport.

* * * * *

AGL IL E5 Kewanee, IL [Amended]

Kewanee Municipal Airport, IL
(Lat. 41°12′19″ N., long. 89°57′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kewanee Airport.

* * * * *

AGL IL E5 Litchfield, IL [Amended]

Litchfield Municipal Airport, IL
(Lat. 39°09′45″ N., long. 89°40′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Litchfield Municipal Airport.

* * * * *

AGL IL E5 Paris, IL [Amended]

Paris, Edgar County Airport, IL
(Lat. 39°41′59″ N., long. 87°40′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Edgar County Airport.

* * * * *

AGL IL E5 Taylorville, IL [Amended]

Taylorville Municipal Airport, IL
(Lat. 39°31′57″ N., long. 89°19′51″ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of the Taylorville Municipal Airport.

Issued in Fort Worth, Texas, on June 22, 2016.

Walter Tweedy,
Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–15403 Filed 6–30–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 160531475–6475–01]

RIN 0691–AA85

Direct Investment Surveys: BE–13, Survey of New Foreign Direct Investment in the United States, and Changes to Private Fund Reporting on Direct Investment Surveys

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the BE–13, Survey of New Foreign Direct Investment in the United States. This proposed rule also provides information about, and an opportunity to comment on, plans to amend the reporting requirements for certain private funds on BEA's surveys of foreign direct investment in the United States, including the BE–605, Quarterly Survey of Foreign Direct Investment in the United States; the BE–15, Annual Survey of Foreign Direct Investment in the United States; and the BE–13, Survey of New Foreign Direct Investment in the United States.

The BE–13 survey collects information on the acquisition or establishment of U.S. business enterprises by foreign investors, and information on expansions by existing U.S. affiliates of foreign companies. The data collected through the survey are used to measure the amount of new foreign direct investment in the United States and ensure complete coverage of BEA's other foreign direct investment statistics. BEA proposes several changes to the survey that will simplify reporting and provide more complete information for use in BEA's direct investment statistics. BEA also proposes

changes in survey form design and accompanying instructions to improve the quality of the data collected and reduce respondent burden. This mandatory BE–13 survey is required from persons subject to the reporting requirements, whether or not they are contacted by BEA.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5:00 p.m. August 30, 2016.

ADDRESSES: You may submit comments, identified by RIN 0691- AA85, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2016–0001.''
- *Email: Patricia.Abaroa@bea.gov.*
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49, Washington, DC 20233.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49, 4600 Silver Hill Road, Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to BEA through any of the methods above and also to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608–0035, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Patricia Abaroa, Chief, Direct Investment Division (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9591.

SUPPLEMENTARY INFORMATION: BEA will conduct the BE–13 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108). Section 4(a) of the Act provides that the President shall, to the extent he deems necessary and feasible,

(1) conduct a regular data collection program to secure current information on international capital flows and information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States;

(2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated the responsibility to BEA.

The purpose of the BE–13 survey is to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish a new facility where business is conducted. The data collected on the survey are used to measure the amount of new foreign direct investment in the United States, assess the impact on the U.S. economy, and based on this assessment, make informed policy decisions regarding foreign direct investment in the United States. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.

BEA will make the survey available via eFile, BEA's electronic filing system. Notifications will be mailed to respondents as BEA becomes aware of a potentially reportable investment or when annual cost updates are needed. A response is required whether or not the respondent is contacted by BEA. The forms are due no later than 45 days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

This proposed rule would amend 15 CFR 801.7 to set forth the reporting requirements for the BE–13, Survey of New Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA).

Description of Changes

BEA proposes to change the reporting requirements for certain private funds that file BEA's surveys of foreign direct investment in the United States: The BE–605, Quarterly Survey of Foreign Direct Investment in the United States; BE–15, Annual Survey of Foreign Direct Investment in the United States; and the BE–13, Survey of New Foreign Direct Investment in the United States. The BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will also be affected by this change but will be addressed in a separate proposed rule in 2017.

BEA, in cooperation with the Treasury Department, proposes to instruct reporters of investments in private funds that meet the definition of direct investment (that is, ownership by one person of 10 percent or more of the voting interest of a business enterprise) but display characteristics of portfolio investment (specifically, investors who do not intend to control or influence the management of an operating company) to report through the Treasury International Capital (TIC) reporting system, where other related portfolio investments are already being reported, and not to report on BEA's direct investment surveys. Direct investment in operating companies, including investment by and through private funds, will continue to be reported to BEA. This change will align the U.S. direct investment and portfolio investment data more closely with the intent of the investment. In addition, it will reduce burden for respondents, many of whom now report both to the TIC reporting system and to BEA's direct investment reporting system. Under the planned change, U.S.

affiliates that are private funds but do not own, directly or indirectly, 10 percent or more of the voting interest of another business enterprise that is not also a private fund or holding company, will no longer be required to report on BEA surveys of foreign direct investment in the United States.

The proposed changes also amend the regulations and the survey forms for the BE–13 survey. These amendments include changes in reporting requirements and questionnaire design and instructions as well as data items collected. The following changes are specific to the BE–13.

BEA proposes to combine Forms BE–13A, Report for Acquisition of a U.S. Business Enterprise That Remains a Separate Entity, and BE–13C, Report for Acquisition of a U.S. Business Enterprise That is Merged With an Existing U.S. Affiliate, into one form and discontinue the use of Form BE–13C. BEA proposes that these acquisitions be filed on Form BE–13A along with acquired U.S. business enterprises that will operate as a separate legal entity after the acquisition. The revised Form BE–13A will be a report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise (including segments, operating units, or real estate) and (1) the total cost of the acquisition is greater than $3 million; and (2) by this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise. BEA originally offered separate forms to alleviate burden on the merging entities by not asking unnecessary questions. BEA found that companies often did not understand the difference between the forms and consequently reported on the wrong one, resulting in resubmissions. Combining the forms will eliminate confusion and the need for resubmission. BEA proposes to redesign Form BE–13A—adding, deleting, and revising questions—to limit the burden for the merging entities. These changes will not affect the data reported on the survey.

BEA proposes to add an instruction to eliminate the requirement to file two forms—Form BE–13B (establishment) and Form BE–13A (acquisition)—when a new U.S. business enterprise is established to facilitate a single U.S. acquisition that takes place within 30 days. The U.S. business enterprise will be asked to consolidate the new U.S. business enterprise with the acquired U.S. business enterprise and submit a single Form BE–13A. The additional Form BE–13B did not provide any benefit to BEA's data collection and the elimination of the BE–13B filing requirement will be a reduction of burden on respondents. A question will be added to Form BE–13A to capture the names of both the established and acquired entities in this scenario.

BEA proposes to clarify the reporting requirements for Form BE–13E, Cost Update for Projects Originally Reported on Forms BE–13B or BE–13D, by removing the reference to the established or expanded business enterprise still being under construction. At least one Form BE–13E must be filed for each reported BE–13B or BE–13D form to obtain actual costs since the cost data provided on these forms may not be final when filed.

BEA is not proposing any changes to the reporting requirements for Form BE–13D, Report for the Expansion of an Existing U.S. Affiliate, or Form BE–13 Claim for Exemption.

BEA proposes to modify the questions on existing U.S. affiliates in the ownership chain between the acquired or established U.S. business enterprise and the foreign parent to narrow the focus to the specific affiliates needed for analysis and to improve the sample frames of the other BEA surveys. Currently, the questions about existing U.S. affiliates are part of the foreign parent section, which is repeated for each foreign parent, creating duplicate entries for existing U.S. affiliates that have multiple foreign parents. The revised survey forms will eliminate this duplication by creating a new section for reporting ownership by existing U.S. affiliates. The updated questions increase the value of the collected information, reduce processing time, and reduce burden on respondents by greatly reducing the likelihood they provide duplicate or otherwise unneeded information.

BEA proposes to restructure and rephrase the cost questions to more accurately capture any funding from the affiliated foreign group to facilitate the new foreign direct investment and to determine whether the funding was in the form of a loan or capital contribution. These data are needed to support BEA's U.S. International Transactions Accounts.

BEA proposes to add an instruction on Forms BE–13B and BE–13D to direct U.S. businesses to report total expected costs by year based on their fiscal year end. Previously, the form did not specify whether to report costs on a calendar or fiscal year end basis.

BEA proposes to add an instruction on Form BE–13 Claim for Exemption to direct U.S. businesses that are reporting expansions to skip the questions asking for U.S. affiliates' total assets, total liabilities, and net income (loss). These questions are not asked on Form BE–13D, Report for the Expansion of an Existing U.S. Affiliate, where expected costs are greater than $3 million, so they are not required for expansions with expected costs of $3 million or less. This was an oversight when BEA created the survey form. U.S. affiliate total sales, number of employees, industry code, country of foreign parent, and country of ultimate beneficial owner will still be required.

BEA proposes to eliminate "lease" and "construction" from the list of expected costs on Forms BE–13B and BE–13D. BEA will continue to collect data on land; property, plant, and equipment (PP&E); intellectual property rights; fees, taxes, permits, and licenses; and other costs. Since leased equipment can also be classified as construction costs or PP&E, respondents struggled with these questions and the data BEA collected had costs inconsistently classified. BEA determined that any capitalized lease or construction costs could be collected as PP&E, so lease and construction can be eliminated. Any construction costs that are not to be capitalized can be combined with other costs.

BEA proposes to add a question to Form BE–13D to collect the name of the expanding U.S. affiliate and to Form BE–13 Claim for Exemption to collect the name of the acquired, established, or expanding U.S. business enterprise. BEA has found that the name of the company filing these forms is often different than the name of the acquired, established, or expanding U.S. business enterprise. Obtaining the name of the U.S. business enterprise would help BEA evaluate respondent compliance.

BEA proposes to add a question to Form BE–13 Claim for Exemption to collect the state where the new investment is located in cases when this form is being filed to report a new investment that met all the requirements for filing on Forms BE–13A, BE–13B, or BE–13D except the $3 million reporting threshold. This addition will improve BEA's data on new investment by state.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608–0035.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE–13 survey, as proposed, is expected to result in the filing of reports from approximately 2,550 U.S. affiliates each year. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 1.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 2,805 hours, compared to 2,160 hours for the previous BE–13 survey estimate. The increase in burden hours is due to the increase in the number of respondents expected to file. The previous estimate of the number of respondents was made before the survey was launched; the revised estimate is based on two years of data collection.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

Most of the U.S. business enterprises that are required to file the survey are units of multinational enterprises. In order to qualify as a small business, the multinational enterprise as a whole must be evaluated when determining if the business meets the size standards set by the Small Business Administration. While BEA only collects information on the U.S. portion of the multinational enterprise, BEA estimates, based on private subscription-based databases, that fewer than 2 percent of the U.S. businesses required to file the BE–13 survey are units of foreign multinational enterprises that would be considered small businesses.

For the few small businesses that meet the reporting requirements of the survey, BEA has attempted to keep burden to a minimum by asking only those questions that are considered essential. The questions required are for data items that a company would ordinarily have obtained when planning an acquisition, establishment, or expansion and therefore the answers are likely to be readily available from the existing records of the business.

Because few small businesses are required to file the survey and because those that are impacted are subject to only a minimal reporting burden, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and record keeping requirements.

Dated: June 17, 2016.

Brian Moyer,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Amend § 801.7 to read as follows:

§ 801.7 Rules and regulations for the BE–13, Survey of New Foreign Direct Investment in the United States.

The BE–13, Survey of New Foreign Direct Investment in the United States, is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new facilities where business is conducted. Foreign direct investment is defined as the ownership or control by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–13 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–13, Survey of New Foreign Direct Investment in the United States, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by filing the properly completed BE–13 report (BE–13A, BE–13B, BE–13D, BE–13E, or BE–13 Claim for Exemption).

(b) *Who must report.* A BE–13 report is required of any U.S. business enterprise, except certain private funds, see exception in item (b.4.), in which:

(1) A foreign direct investment in the United States relationship is created;

(2) An existing U.S. affiliate of a foreign parent establishes a new U.S. business enterprise, expands its U.S. operations, or acquires a U.S. business enterprise, or;

(3) BEA requests a cost update (Form BE–13E) for a U.S. business enterprise that previously filed Form BE–13B or BE–13D.

(4) Certain private funds are exempt from reporting on the BE–13 survey. If a U.S. business enterprise is a private

fund and does not own, directly or indirectly, 10 percent or more of another business enterprise that is not also a private fund or a holding company, it is not required to file any BE–13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates would report their information on one of five forms—BE–13A, BE–13B, BE–13D, BE–13E, or BE–13 Claim for Exemption.

(1) Form BE–13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise including segments, operating units, or real estate; and

(i) The total cost of the acquisition is greater than $3 million; and

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE–13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

(i) The expected total cost to establish the new U.S. business enterprise is greater than $3 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) Form BE–13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted and the expected total cost of the expansion is greater than $3 million.

(4) Form BE–13E—Report for a U.S. business enterprise that previously filed Form BE–13B or BE–13D. Form BE–13E collects updated cost information and will be collected annually until the establishment or expansion of the U.S. business enterprise is complete.

(5) Form BE–13 Claim for Exemption—Report for a U.S. business enterprise that:

(i) was contacted by BEA but does not meet the requirements for filing Forms BE–13A, BE–13B, or BE–13D; or

(ii) whether or not contacted by BEA, met all requirements for filing Forms BE–13A, BE–13B, or BE–13D except the $3 million reporting threshold.

(d) *Due date.* The BE–13 forms are due no later than 45 calendar days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

[FR Doc. 2016–15598 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–06–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, and 240

[Release No. 33–10107; 34–78168; File No. S7–12–16]

RIN 3235–AL90

Amendments to Smaller Reporting Company Definition

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the definition of "smaller reporting company" as used in our rules and regulations. The proposed amendments, which would expand the number of registrants that qualify as smaller reporting companies, are intended to promote capital formation and reduce compliance costs for smaller registrants, while maintaining investor protections. Registrants with less than $250 million in public float would qualify, as would registrants with zero public float if their revenues were below $100 million in the previous year.

DATES: Comments should be received on or before August 30, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–12–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–16. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Amy Reischauer, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 405 [1] under the Securities Act of 1933 (Securities Act),[2] Rule 12b–2 [3] under the Securities Exchange Act of 1934 (Exchange Act) [4] and Item 10(f) [5] of Regulation S–K.[6]

Table of Contents

I. Introduction
II. Proposed Amendments
  A. Rationale for Proposed Amendments
  B. Proposed Amendments to Smaller Reporting Company Definition
  1. Public Float Thresholds
  2. Revenue Thresholds
  C. Proposed Amendments to Accelerated Filer and Large Accelerated Filer Definitions
  D. Request for Comment
III. Economic Analysis
  A. Baseline and Potential Affected Parties
  B. Potential Economic Effects
  1. Introduction
  2. Estimation of Potential Costs and Benefits
  3. Affiliated Ownership and Adverse Selection
  4. Effects on Efficiency, Competition and Capital Formation
  C. Possible Alternatives
  D. Request for Comment
IV. Paperwork Reduction Act
  A. Background
  B. Summary of Information Collections

---

[1] 17 CFR 230.405.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12b–2.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 229.10(f).

[6] 17 CFR 229.10 *et seq.*

  - C. Burden and Cost Estimates
    - 1. Form 10–K
    - 2. Form 10–Q
    - 3. Schedule 14A
    - 4. Schedule 14C
    - 5. Form 10
    - 6. Form S–1
    - 7. Form S–3
    - 8. Form S–4
    - 9. Form S–11
  - D. Request for Comment
- V. Initial Regulatory Flexibility Analysis
  - A. Reasons for, and Objectives of, the Action
  - B. Legal Basis
  - C. Small Entities Subject to the Proposed Amendments
  - D. Projected Reporting, Recordkeeping and Other Compliance Requirements
  - E. Overlapping or Conflicting Federal Rules
  - F. Significant Alternatives
  - G. General Request for Comment
- VI. Small Business Regulatory Enforcement Fairness Act
- VII. Statutory Basis and Text of Proposed Rules

I. Introduction

Over the years, the Commission has sought to promote capital formation and reduce compliance costs for smaller registrants while maintaining investor protections.[7] Our disclosure system provides accommodations in the form of scaled disclosure requirements for certain categories of smaller registrants in an attempt to further these goals.

Smaller reporting companies are one category of registrants eligible for scaled disclosure.[8] The Commission established the smaller reporting company category of registrants in 2007 in an effort to provide general regulatory relief for smaller registrants.[9] The smaller reporting company definition replaced the "small business issuer" definition in former Regulation S–B. The Commission created Regulation S–B, a small business integrated registration and reporting system, in 1992 as part of a larger effort to facilitate small business capital formation and reduce the compliance burdens placed on small registrants by the federal securities laws.[10] Regulation S–B was specifically tailored to small business issuers, which were issuers with both annual revenues and public floats of less than $25 million.

Smaller reporting company is defined in Securities Act Rule 405, Exchange Act Rule 12b–2 and Item 10(f) of Regulation S–K. Substantively, the three definitions are identical. Smaller reporting companies generally[11] are registrants with:

- Less than $75 million in public float as of the last business day of their most recently completed second fiscal quarter;[12] or
- zero public float[13] and annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

Smaller reporting companies may comply selectively with the scaled disclosures available to them on an item-by-item basis.[14] The following table summarizes the scaled disclosure accommodations available to smaller reporting companies in Regulation S–K and Regulation S–X.[15]

Item	Scaled disclosure accommodation
	Regulation S–K
101—Description of Business	May satisfy disclosure obligations by describing the development of its business during the last three years rather than five years. Business development description requirements are less detailed than disclosure requirements for non-smaller reporting companies.

---

[7] *See, e.g.,* Simplified Registration and Reporting Requirements for Small Issuers, Release No. 33–6049 (Apr. 3, 1979) [44 FR 21562 (Apr. 10, 1979)] (Form S–18 Release); Small Business Initiatives, Release No. 33–6924 (Mar. 11, 1992) [57 FR 9768 (Mar. 20, 1992)].

[8] In 2012, Title I of the JOBS Act created a new category of registrant called an "emerging growth company." Pub. L. 112–106, Secs. 102–104, 126 Stat. 306 (2012). Emerging growth companies (EGCs) also are eligible for a variety of accommodations, including certain of the scaled disclosure accommodations available to smaller reporting companies, such as the scaled executive compensation disclosures under Item 402(l) through (r) of Regulation S–K. In addition, EGCs are exempt from the Sarbanes-Oxley Act Section 404(b) auditor attestation of internal control over financial reporting. For a discussion of scaled disclosure accommodations available to EGCs, *see* Business and Financial Disclosure Required by Regulation S–K, Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (April 22, 2016)] (Regulation S–K Concept Release).

A registrant qualifies as an EGC if it did not complete its first registered sale of common equity securities on or before December 8, 2011 and has total annual gross revenues of less than $1 billion during its most recently completed fiscal year.

[9] Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (Smaller Reporting Company Adopting Release).

[10] Small Business Initiatives, Release No. 33–6949 (July 30, 1992) [57 FR 36442 (Aug. 13, 1992)]. The Commission rescinded Regulation S–B when it established the smaller reporting company definition. Regulation S–B was modeled after former Form S–18, which allowed issuers that were not subject to the Commission's reporting requirements to raise limited amounts of capital without immediately incurring the full range of disclosure and reporting obligations required of other issuers. *See* Form S–18 Release. While Form S–18 was intended to facilitate small business access to public capital markets, eligibility to use the form was based on offering size, not issuer size. The Commission rescinded Form S–18 when it adopted Regulation S–B.

[11] The smaller reporting company definition specifically excludes investment companies, asset-backed issuers (as defined in Item 1101 of Regulation AB [17 CFR 229.1101]) and majority-owned subsidiaries of a parent that is not a smaller reporting company. Lower public float and revenue thresholds apply to registrants that determined that they did not qualify as smaller reporting companies in the prior year, but are eligible to transition to smaller reporting company status. Specifically, these registrants would qualify as smaller reporting companies if their public float was less than $50 million as of the last business day of their most recently completed second fiscal quarter or they had zero public float as of such date and revenues of less than $40 million during the previous fiscal year.

[12] Public float is computed by multiplying the aggregate worldwide number of shares of a registrant's voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity. A registrant filing its initial registration statement under the Securities Act or Exchange Act calculates its public float by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares. In contrast, market capitalization reflects the value of a registrant's voting and non-voting common equity held by all holders, whether affiliates or non-affiliates.

[13] A registrant may have zero public float because it has no public equity outstanding or no market price for its equity exists. Based on data compiled by the Commission's Division of Economic and Risk Analysis (DERA), in calendar year 2015, approximately 18 percent of smaller reporting companies had no public float.

[14] *See* Smaller Reporting Company Adopting Release. Where a disclosure requirement applicable to smaller reporting companies is more stringent than the corresponding requirement for non-smaller reporting companies, however, smaller reporting companies must comply with the more stringent standard. The Smaller Reporting Company Adopting Release identified Item 404 of Regulation S–K [17 CFR 229.404] as the only instance in Regulation S–K in which the disclosure requirements applicable to smaller reporting companies could be more stringent.

[15] 17 CFR 210.1–01 *et seq.*

Item	Scaled disclosure accommodation
201—Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.	Stock performance graph not required.
301—Selected Financial Data	Not required.
302—Supplementary Financial Information	Not required.
303—Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A).	Two-year MD&A comparison rather than three-year comparison. Two-year discussion of impact of inflation and changes in prices rather than three years. Tabular disclosure of contractual obligations not required.
305—Quantitative and Qualitative Disclosures About Market Risk.	Not required.
402—Executive Compensation	Three named executive officers rather than five. Two years of summary compensation table information rather than three. Not required: • Compensation discussion and analysis. • Grants of plan-based awards table. • Option exercises and stock vested table. • Pension benefits table. • Nonqualified deferred compensation table. • Disclosure of compensation policies and practices related to risk management. • Pay ratio disclosure.
404—Transactions With Related Persons, Promoters and Certain Control Persons[16].	Description of policies/procedures for the review, approval or ratification of related party transactions not required.
407—Corporate Governance	Audit committee financial expert disclosure not required in first year. Compensation committee interlocks and insider participation disclosure not required. Compensation committee report not required.
503—Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges.	No ratio of earnings to fixed charges disclosure required. No risk factors required in Exchange Act filings.
601—Exhibits	Statements regarding computation of ratios not required.

Regulation S–X

Rule	Scaled Disclosure
8–02—Annual Financial Statements	Two years of income statements rather than three years. Two years of cash flow statements rather than three years. Two years of changes in stockholders' equity statements rather than three years.
8–03—Interim Financial Statements	Permits certain historical financial data in lieu of separate historical financial statements of equity investees.
8–04—Financial Statements of Businesses Acquired or to Be Acquired.	Maximum of two years of acquiree financial statements rather than three years.
8–05—Pro forma Financial Information	Fewer circumstances under which pro forma financial statements are required.
8–06—Real Estate Operations Acquired or to Be Acquired.	Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8–08—Age of Financial Statements	Less stringent age of financial statements requirements.

II. Proposed Amendments

A. Rationale for Proposed Amendments

The Commission seeks to promote capital formation and reduce compliance costs for smaller registrants while maintaining investor protections.[17] Raising the financial thresholds in the smaller reporting company definition attempts to further these goals by expanding the number of smaller registrants that are eligible to deliver scaled disclosure to their investors. Doing so also would address several recommendations made to us multiple times by our Advisory Committee on Small and Emerging Companies (ACSEC)[18] and the SEC Government-Business Forum on Small Business Capital Formation (Small Business Forum),[19] as well as comments

---

[16] Item 404 also contains the following *expanded* disclosure requirements applicable to smaller reporting companies: (1) Rather than a flat $120,000 disclosure threshold, the threshold is the lesser of $120,000 or 1% of total assets, (2) disclosures are required about parents and underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter, and (3) an additional year of Item 404 disclosure is required in filings other than registration statements.

[17] *See* note 7.

[18] The Commission established the ACSEC in 2011 with the objective of providing the Commission with advice on its rules, regulations and policies with regard to its mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation, as they relate to: (1) Capital raising by emerging privately-held small businesses (emerging companies) and publicly traded companies with less than $250 million in public market capitalization (smaller public companies) through securities offerings, including private and limited offerings and initial and other public offerings; (2) trading in the securities of emerging companies and smaller public companies; and (3) public reporting and corporate governance requirements of emerging companies and smaller public companies. *See* Advisory Committee on Small and Emerging Companies Charter (Sept. 24, 2015); Advisory Committee on Small and Emerging Companies, Release No. 33–9258 (Sept. 12, 2011) [76 FR 57769 (Sept. 16, 2011)]. The Commission's Investor Advisory Committee has not provided the Commission with a recommendation regarding the smaller reporting company definition.

[19] The Small Business Investment Incentive Act of 1980 directed the Commission to conduct an annual government-business forum to undertake an ongoing review of the financing problems of small businesses.

15 U.S.C. 80c–1. The Small Business Forum has met annually since 1982 to provide a platform to highlight perceived unnecessary impediments to

from small registrants, Congress and others.[20]

Advisory Committee on Small and Emerging Companies. In September 2015 and March 2013, the ACSEC recommended revising the smaller reporting company definition to include registrants with a public float of up to $250 million.[21] The 2013 ACSEC Recommendations also included a recommendation to revise the smaller reporting company definition for registrants that are unable to calculate their public float to include registrants with less than $100 million in annual revenues.

Small Business Forum. The 2015 Small Business Forum recommended that the smaller reporting company definition be revised to include registrants with a public float of less than $250 million or registrants with a public float of less than $700 million and annual revenues of less than $100 million.[22]

Regulation S–K Study. Section 108 of the Jumpstart Our Business Startups Act (JOBS Act)[23] required the Commission to conduct a review of Regulation S–K and to transmit to Congress a report of the review. In December 2013, the Commission published a staff report on the review of the disclosure requirements in Regulation S–K (S–K Study).[24] The S–K Study recommended consideration of the criteria used to determine eligibility for scaling of disclosure requirements, including the definitional thresholds for smaller reporting companies.

Disclosure Effectiveness Initiative Comments. The Commission staff currently is undertaking a broad-based review of our disclosure requirements, known as the Disclosure Effectiveness Initiative.[25] As part of the Disclosure Effectiveness Initiative, the staff requested public input generally on how our disclosure system could be improved and, while the staff did not ask specifically for comment on smaller reporting companies, it received some comments on the smaller reporting company definition and scaled disclosure requirements available to smaller reporting companies.[26] Only three commenters addressed the smaller reporting company definition or the general concept of scaling disclosure requirements for smaller reporting companies.[27] One of these commenters generally supported scaled disclosure requirements, noting that smaller companies face challenges when preparing annual reports.[28] Another of these commenters suggested that overreliance on public float to define smaller reporting companies creates a compliance burden for registrants with high valuations that otherwise would be considered small.[29] This commenter recommended revising the smaller reporting company definition to include registrants with a public float below $250 million or annual revenues below $100 million regardless of public float to avoid grouping "highly valued" registrants with little or no revenue with larger registrants. The third commenter expressed concerns with a differential disclosure regime for different sized entities, stating that "investors will factor the differences (*i.e.,* they will price the lack of transparency, clarity and comparability in what may be perceived to be lower-quality requirements) into their price determinations."[30]

FAST Act. The Fixing America's Surface Transportation (FAST) Act of 2015[31] requires the Commission to revise Regulation S–K to further scale or eliminate disclosure requirements to reduce the burden on a variety of smaller registrants, including smaller reporting companies, while still providing all material information to investors.[32] Because a number of Regulation S–K items already provide scaled disclosure requirements for smaller reporting companies, raising the financial thresholds in the smaller reporting company definition would be responsive to the FAST Act because it would reduce the burden on smaller registrants by increasing the number of registrants eligible for scaled disclosure.

Although the proposed amendments would permit a broader group of registrants to make scaled disclosure to their investors, we do not believe that the scaled disclosure would significantly alter the total mix of information available about these registrants. We believe the existing scaled disclosure requirements benefit the current pool of smaller reporting companies, but we are requesting comment on how an extension of scaled disclosure requirements to a proposed broader pool of registrants could affect investors' access to material information about registrants. We further believe that the Commission should periodically re-evaluate whether the

---

small business capital formation and address whether they can be eliminated or reduced. Each forum seeks to develop recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection. Information about the Small Business Forum is available at *http://www.sec.gov/info/smallbus/sbforum.shtml.*

[20] *See* letters from the UK Financial Report Council (Mar. 10, 2015) (UK Financial), Biotechnology Industry Organization (July 14, 2015) (BIO), and Standards & Financial Market Integrity Division, CFA Institute (Nov. 12, 2014) (CFA Institute). For a discussion of these comments *see* notes 25 through 30 and related text.

[21] ACSEC Recommendations about Expanding Simplified Disclosure for Smaller Issuers (Sept. 23, 2015) (2015 ACSEC Recommendations), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf* and ACSEC Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies (Feb. 1, 2013) (2013 ACSEC Recommendations), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf.* Both of these recommendations also included a recommendation that the Commission revise the "accelerated filer" definition to include companies with a public float of $250 million or more, but less than $700 million. The accelerated filer definition currently includes companies with a public float of $75 million or more, but less than $700 million. Exchange Act Rule 12b–2. If these recommendations were implemented, non-EGC registrants with public floats between $75 million and $250 million would not be required to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 1116 Stat. 745 (2002) (Sarbanes-Oxley Act)). *See* Section II.C for a discussion of the accelerated filer definition.

[22] Final Report of the 2015 SEC Government Business Forum on Small Business Capital Formation (Apr. 2016) (2015 Small Business Forum Recommendations), available at *https://www.sec.gov/info/smallbus/gbfor34.pdf.* The 2014, 2013, 2012, 2010 and 2009 Small Business Forums made the same or similar recommendations (Prior Small Business Forum Recommendations). Final Small Business Forum reports are available at *https://www.sec.gov/info/smallbus/sbforumreps.htm.*

[23] Pub. L. 112–106, 126 Stat. 306 (2012).

[24] Report on Review of Disclosure Requirements in Regulation S–K (Dec. 2013), available at *https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.*

[25] *See* Disclosure Effectiveness, available at *https://www.sec.gov/spotlight/disclosure-effectiveness.shtml.*

[26] Comment letters related to this request are available at *https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.*

[27] Other commenters commented on the placement of scaled disclosure requirements in Regulation S–K and on the scaled disclosure requirements available to EGCs. For a discussion of these comments, *see* Section IV.H of the S–K Concept Release. For purposes of this proposal, we focus on comments relevant to the smaller reporting company definition.

[28] *See* letter from UK Financial.

[29] *See* letter from BIO.

[30] *See* letter from CFA Institute.

[31] Pub. L. 114–94, 129 Stat. 1312 (2015).

[32] Specifically, FAST Act § 72002 requires the Commission within 180 days of enactment "to take all such actions to revise [R]egulation S–K . . . to further scale or eliminate requirements of [R]egulation S–K, in order to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors." The FAST Act also requires the Commission to carry out a study to determine how best to modernize and simplify the disclosure requirements in Regulation S–K in consultation with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies, to issue a report of findings and recommendations to Congress, and to propose revisions to those requirements. Pub. L. 114–94, Sec. 72003, 129 Stat. 1312 (2015).

definition of smaller reporting company remains appropriate. Under our proposed amendments, the additional registrants that would qualify for scaled disclosure would remain subject to liability for their disclosures and, in addition to the information expressly required to be included by the rules, would be required to provide such further material information, if any, as may be necessary to make any required statements, in the light of the circumstances under which they are made, not misleading.[33] In addition, their disclosure would be subject to the same review that they currently receive as part of the Division of Corporation Finance's review process. These measures of investor protection would remain unchanged under the proposed amendments.

Although the proposed amendments would not affect the existing scaled disclosure requirements in Regulation S–K or Regulation S–X, we are considering our approach to scaled disclosure generally in connection with the Disclosure Effectiveness Initiative. To that end, in April 2016, we issued the Regulation S–K Concept Release in which we considered and sought comment on other aspects of our scaled disclosure system, including categories of registrants eligible for scaled disclosure, whether we should exclude certain types of registrants from the use of scaled disclosure, and whether and how we should scale our disclosure requirements. Comments received on the Regulation S–K Concept Release will help to inform any further consideration of changes to the scaled disclosure system or other changes in connection with the Disclosure Effectiveness Initiative.

B. Proposed Amendments to Smaller Reporting Company Definition

We are proposing amendments to the smaller reporting company definition to expand the number of registrants that qualify as smaller reporting companies and thereby benefit from scaled disclosure requirements. In addition, we are proposing amendments to the "accelerated filer" and "large accelerated filer" definitions in Exchange Act Rule 12b–2 to preserve the application of the current thresholds contained in those definitions.[34]

When considering potential new thresholds for the public float and revenue calculations, we determined that solely adjusting those thresholds for inflation would not meaningfully reduce the burdens on smaller registrants because it would have a small impact on the number of additional registrants that would qualify as smaller reporting companies. If adjusted for inflation, the $75 million public float threshold set in 2007 would be equivalent to $85.7 million, and the $50 million revenue threshold set in 2007 would be equivalent to $57.2 million.[35]

We also considered that EGCs, many of which have larger public floats and revenues than smaller reporting companies, are eligible for a variety of accommodations, including certain scaled disclosure accommodations. The EGC accommodations, however, are time-limited for equity issuers, as they phase out generally by the fifth anniversary of the first registered sale of common equity securities of the registrant.[36] Because smaller reporting company status is not time-limited and could extend indefinitely depending on the company's growth, we believe that the new smaller reporting company thresholds should be lower than the thresholds to qualify as an EGC, which this proposal would maintain.

The smaller reporting company thresholds we are proposing today are consistent with those recommended by the ACSEC and the Small Business Forum, although they would be more limited in some respects.[37] These amendments use the same criteria of public float and revenues to determine smaller reporting company status that the Commission adopted in 2007. We are, however, seeking comment on whether we should use other criteria and, if so, what criteria we should consider.[38]

Under the proposed definition, registrants [39] with a public float of less than $250 million would qualify as smaller reporting companies.[40] Consistent with the current definition, a reporting company would determine whether it qualifies as a smaller reporting company by calculating its public float as of the last business day of its most recently completed second fiscal quarter.[41] Similarly, as with the current definition, a registrant filing its initial registration statement under the Securities Act or the Exchange Act would calculate its public float as of a date within 30 days of filing the registration statement.[42] A registrant whose public float was zero would qualify as a smaller reporting company if it had annual revenues of less than $100 million during its most recently completed fiscal year.[43]

Under the proposed definition, a registrant that determines that it does not qualify as a smaller reporting company will remain unqualified unless and until it determines that its public float was less than $200 million as of the last business day of its most recently completed second fiscal quarter.[44] If such a registrant's public float was zero, it would remain unqualified unless and until it had annual revenues of less than $80 million during its previous fiscal year.[45]

---

[33] *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[34] The definitions of accelerated filer and large accelerated filer are based on public float, but contain a provision excluding registrants that are eligible to use the smaller reporting company requirements in Regulation S–K for their annual and quarterly reports. As a result, raising the smaller reporting company public float threshold without eliminating that provision effectively would raise the accelerated filer public float threshold. *See* Section II.C for a discussion of the proposed amendments to the accelerated filer and large accelerated filer definitions.

[35] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*). For further discussion of the impact of adjusting the thresholds solely for inflation, including the number of additional registrants that would be eligible for smaller reporting company status, *see* note 99 and related text.

[36] A registrant retains EGC status until the earliest of: (1) The last day of its fiscal year during which its total annual gross revenues are $1 billion or more; (2) the date it is deemed to be a large accelerated filer under the Commission's rules; (3) the date on which it has issued more than $1 billion in non-convertible debt in the previous three years; or (4) the last day of the fiscal year following the fifth anniversary of the first registered sale of common equity securities of the registrant. Pub. L. 112–106, Sec. 101, 126 Stat. 306 (2012); 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80). In addition, the FAST Act amended Securities Act Section 6(e)(1) [15 U.S.C. 77 f(e)(1)] to provide a grace period for EGCs at risk of losing such status after the initial filing or confidential submission of their initial public offering (IPO) registration statement but before the IPO is completed. Such registrants shall continue to be treated as an EGC through the earlier of the consummation of the IPO or one year after they would otherwise cease to be an EGC. *See* Pub. L. 114–94, Sec. 71002, 129 Stat. 1312 (2015).

[37] *See* 2015 ACSEC Recommendations; 2013 ACSEC Recommendations; 2015 Small Business Forum Recommendations; Prior Small Business Forum Recommendations. *See also* note 21.

[38] For a discussion of alternative thresholds, *see* Section III.C.

[39] The proposed amendments would not change the types of registrants that are eligible to qualify as smaller reporting companies. *See* note 11.

[40] *See* Proposed Item 10(f)(1)(i) and (ii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[41] *See* Proposed Item 10(f)(1)(i) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[42] *See* Proposed Item 10(f)(1)(ii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[43] *See* Proposed Item 10(f)(1)(iii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2. A registrant may have zero public float if it has no public equity outstanding or no market price for its public equity.

[44] *See* Proposed Item 10(f)(2)(iii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[45] *See id.*

The following table summarizes the proposed amendments to the smaller reporting company definition.

Registrant category	Current definition	Proposed definition
Reporting Registrant	Less than $75 million of public float at end of second fiscal quarter.	Less than $250 million of public float at end of second fiscal quarter.
Registrant Filing Initial Registration Statement	Less than $75 million of public float within 30 days of filing.	Less than $250 million of public float within 30 days of filing.
Registrant with Zero Public Float	Less than $50 million of revenues in most recent fiscal year.	Less than $100 million of revenues in most recent fiscal year.
Non-Smaller Reporting Company that Seeks to Qualify as a Smaller Reporting Company Based on Public Float.	Less than $50 million of public float at end of second fiscal quarter.	Less than $200 million of public float at end of second fiscal quarter.
Non-Smaller Reporting Company with Zero Public Float that Seeks to Qualify as a Smaller Reporting Company.	Less than $40 million of revenues in most recent fiscal year.	Less than $80 million of revenues in most recent fiscal year.

Empirical analysis conducted by the Commission's Division of Economic and Risk Analysis (DERA) suggests that scaled disclosures may generate a modest, but statistically significant, amount of cost savings in terms of the reduction in compliance costs for most of the newly eligible smaller reporting companies under the proposed amendments, a modest, but statistically significant, deterioration in some of the proxies used to assess the overall quality of information environment, and a muted effect on the growth of the registrant's capital investments, investments in research and development (R&D) and assets.[46]

1. Public Float Thresholds

In 2015, approximately 32% of registrants had less than $75 million in public float,[47] compared to approximately 42% of registrants when the smaller reporting company was established.[48] The decrease in the size of the pool of registrants that qualify as smaller reporting companies has limited the benefits of scaled reporting to a smaller percentage of registrants than under the original definition. If adopted as proposed, increasing the public float threshold to $250 million would result in approximately 42% of registrants qualifying as smaller reporting companies based on their public float.[49] As is the case with the current definition, we believe that once a registrant determines that it does not qualify as a smaller reporting company,[50] it should not qualify until its public float falls below another, lower threshold. This definitional structure helps to avoid situations in which registrants enter and exit smaller reporting company status due to small fluctuations in their public float. Therefore, we propose increasing the public float threshold from $50 million to $200 million for registrants that determined that they did not qualify as smaller reporting companies and subsequently seek to qualify.

2. Revenue Thresholds

In 2015, approximately 10% of registrants qualified as smaller reporting companies by having zero public float and less than $50 million in annual revenues.[51] The number of registrants that would qualify as smaller reporting companies would increase by 31, or less than 1%, if the annual revenue threshold were adopted as proposed and increased to $100 million.[52] The threshold is consistent with thresholds recommended by the ACSEC and the Small Business Forum.[53]

Under the current definition, once a registrant determines that it does not qualify as a smaller reporting company,[54] it cannot qualify based on revenues until its revenues fall below $40 million. As discussed above with respect to the public float thresholds, we believe having a separate, lower revenue threshold for these registrants helps to avoid situations in which registrants enter and exit smaller reporting company status due to small fluctuations in their revenues. Increasing the annual revenue threshold from $40 million to $80 million for registrants with zero public float that determined that they did not qualify as smaller reporting companies but subsequently seek to qualify would maintain the ratio that exists between the $50 million and $40 million thresholds in the current definition.

We are not proposing, as recommended by one commenter on the Disclosure Effectiveness Initiative,[55] to eliminate the public float criteria for registrants that meet these proposed revenue thresholds or any other revenue thresholds. When the Commission proposed the smaller reporting company definition, it specifically solicited comment on a revenue-only test. In adopting the smaller reporting company definition, the Commission noted that the majority of commenters supported the proposal to use a public float standard in most cases, agreeing that the Commission should use a revenue test only if a registrant is unable to calculate its public float.[56] By eliminating the revenue test for most registrants, the Commission stated that the new definition of smaller reporting company would simplify and streamline the definition while expanding the number of companies eligible to qualify. The amendments to the smaller reporting company definition we are now proposing retain this approach because we believe that the public float test has worked well in practice and has streamlined the definition,[57] as the Commission intended when it adopted the current test.[58] We do, however, request comment below on whether we should consider instead using or allowing a revenue-only test for the smaller reporting company definition.

---

[46] For a discussion of DERA's empirical analysis, *see* Section III.B.

[47] Based on public float values disclosed by registrants in their Form 10–K filings, 2,408, or 31.8%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having a public float of less than $75 million.

[48] Approximately 4,976, or 41.8%, of the 11,898 registrants that filed Exchange Act annual reports in 2006 had a public float of less than $75 million. *See* Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8819 (July 5, 2007) [72 FR 39670 (July 19, 2007)]. The release cites data from the Commission's EDGAR filing system and Thomson Financial (Datastream). The Datastream data included all registered public firms trading on the New York Stock Exchange, the American Stock Exchange, the Nasdaq, the Over-the-Counter Bulletin Board and the Pink Sheets and excluded closed end funds, exchange traded funds, American depositary receipts and direct foreign listings.

[49] Based on public float values disclosed by registrants in their Form 10–K filings, 3,159, or 41.8%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having a public float of less than $250 million.

[50] Either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[51] 775, or 10.3%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having zero public float and less than $50 million in annual revenues, based on public float values and revenues disclosed by registrants in their Form 10–K filings.

[52] Based on public float values and revenues disclosed by registrants in their Form 10–K filings, 31 of the 7,557 registrants that filed a Form 10–K in 2015 had zero public float and between $50 million and $100 million in annual revenues.

[53] *See* 2015 Small Business Forum Recommendations; 2013 ACSEC Recommendations.

[54] Either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[55] *See* BIO Letter.

C. Proposed Amendments to Accelerated Filer and Large Accelerated Filer Definitions

We are not proposing to amend the public float thresholds for when a registrant would qualify as an accelerated filer or large accelerated filer.[59] We are proposing amendments to those definitions, however, to eliminate the provision in each that specifically excludes registrants that are eligible to use the smaller reporting company requirements under Regulation S–K for their annual and quarterly reports.[60] As a result, the proposed amendments would preserve the application of the current thresholds contained in the accelerated filer and large accelerated filer definitions.

Because the public float thresholds for exiting smaller reporting company status and entering accelerated filer status currently are both $75 million, and the determinations are both made as of the last business day of a registrant's second fiscal quarter, the smaller reporting company provision in the accelerated filer definition does not currently exclude from the accelerated filer definition any registrants that would not otherwise be excluded. If we raised the smaller reporting company public float threshold to $250 million without eliminating the smaller reporting company provision from the accelerated filer definition, however, those registrants with public floats of up to $250 million would be excluded from the accelerated filer requirements because they would be eligible under the proposed amendments to use the smaller reporting company requirements under Regulation S–K. In effect, we would be raising the accelerated filer public float threshold indirectly. Eliminating the smaller reporting company provision in the accelerated filer definition, therefore, would maintain the status quo regarding the size of registrants that are subject to the accelerated filer disclosure and filing requirements.

The public float threshold for entering large accelerated filer status currently is $700 million, so the smaller reporting company provision in the large accelerated filer definition does not currently exclude from the large accelerated filer definition any registrants that would not otherwise be excluded. If the proposed amendments were adopted and the smaller reporting company public float threshold became $250 million, the smaller reporting company provision in the large accelerated filer definition still would not exclude any registrants that would not otherwise be excluded. Nevertheless, we are proposing to eliminate this provision because it currently does not capture any registrants, would not capture any registrants if the proposed amendments were adopted, and could lead to confusion if retained.

In September 2015, the ACSEC recommended that the Commission revise the accelerated filer definition to include registrants with a public float threshold of $250 million or more, but less than $700 million.[61] If we implemented this recommendation, in addition to having a longer period to file their annual and quarterly reports, non-EGCs with public floats between $75 million and $250 million would no longer be required to provide, and investors in those registrants would no longer receive the benefits of, auditor attestation reports required by Section 404(b) of the Sarbanes-Oxley Act.[62]

In April 2011, the staff conducted a study (Staff Section 404(b) Study)[63] mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act)[64] to determine how the Commission could reduce the burden of complying with Section 404(b) of the Sarbanes-Oxley Act for registrants with market capitalizations between $75 million and $250 million.[65] The staff's analysis, in part, found no specific evidence that any potential savings from exempting registrants with public floats between $75 million and $250 million from the auditor attestation provisions of Section 404(b) would justify the loss of investor protections and benefits to registrants from such an exemption.[66] Rather, the staff found that accelerated filers (including those with a public float between $75 million and $250 million) that were subject to the Section 404(b) auditor attestation requirements generally had a lower restatement rate than registrants that were not subject to the requirements. Moreover, the staff found that the population of registrants with public floats between $75 million and $250 million did not have sufficiently unique characteristics that would justify differentiating this population of registrants from other accelerated filers with respect to the Section 404 auditor attestation requirements.[67] Ultimately, the study recommended that the Section 404(b) requirements be maintained for accelerated filers, including those with a public float between $75 million and $250 million.[68]

---

[56] *See* Smaller Reporting Company Adopting Release. The small business issuer definition, which the smaller reporting company definition replaced, was based on both public float and annual revenue.

[57] Registrants no longer have to calculate both public float and annual revenue under the smaller reporting company definition.

[58] *See* Smaller Reporting Company Adopting Release.

[59] Accelerated filer and large accelerated filer are defined in Exchange Act Rule 12b–2. Being an accelerated filer or a large accelerated filer triggers the requirement contained in Section 404(b) of the Sarbanes-Oxley Act that a non-EGC registrant's registered public accounting firm provide, for inclusion in the registrant's annual report, an attestation report on internal control over financial reporting. Accelerated and large accelerated filers also must provide their internet address and disclosure regarding the availability of their filings required by Items 101(e)(3) and (4) of Regulation S–K, as well as disclosure required by Item 1B of Form 10–K about unresolved staff comments on their periodic or current reports. In addition, accelerated and large accelerated filers are subject to accelerated periodic report filing deadlines.

[60] Subparagraphs (1)(iv) of the accelerated filer definition and (2)(iv) of the large accelerated filer definition in Exchange Act Rule 12b–2.

[61] 2015 ACSEC Recommendations; 2013 ACSEC Recommendations.

[62] As a general matter, the Sarbanes-Oxley Act requires that the management of certain registrants assess the effectiveness of the registrant's internal control over financial reporting, while Section 404(b) specifically requires a registrant's auditor to attest to, and report on, management's assessment.

[63] Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million (Apr. 2011), available at *https://www.sec.gov/news/studies/2011/404bfloat-study.pdf*.

[64] Pub. L. 111–203, 124 Stat. 1376 (2010).

[65] *See* Dodd-Frank Act § 989G(b). That section also provided that the study shall "consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings."

[66] In 2007, the Commission issued interpretive guidance for management regarding its evaluation of internal controls and disclosure requirements, and the Public Company Accounting Oversight Board adopted Auditing Standard No. 5 regarding Audits of Internal Control over Financial Reporting (AS 5) in an effort to reduce the compliance burden and improve the implementation of Section 404, including the requirements of Section 404(b). *See* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33–8810 (June 20, 2007) [72 FR 35324 (June 27, 2007)]. However, one stakeholder representative has raised concerns about whether, in response to PCAOB inspection results, some auditors more recently have started to take approaches to evaluating internal control over financial reporting that are inconsistent with attaining goals for reduced compliance costs in this area. *See* letter from Center for Capital Markets Competitiveness (May 29, 2015).

Since the staff's study was concluded, academic research has resulted in mixed findings.[69] In light of these mixed findings, we are not proposing to raise the accelerated filer public float threshold or to modify the Section 404(b) requirements for registrants with a public float between $75 million and $250 million. However, we are requesting comment below on whether we should consider raising the public float threshold in the accelerated filer definition.

D. Request for Comment

1. Should the thresholds for smaller reporting company status be raised? Why or why not? Should the current thresholds be kept at their current levels but adjusted for inflation? Why or why not?

2. Does raising the thresholds for smaller reporting company status as proposed appropriately consider the objectives of capital formation and investor protection? Why or why not? Is there a better way to accomplish these objectives?

3. Would raising the thresholds promote capital formation or liquidity for smaller registrants? Could raising the thresholds result in a loss of material information about registrants that would qualify as smaller reporting companies under the higher thresholds? Does scaled disclosure impact the ability of investors to make informed investment decisions? Does scaled disclosure lead to a greater incidence of fraud?

4. As proposed, should the smaller reporting company definition continue to be based primarily on public float and, in the absence of public float, revenue? Why or why not? If so, should the public float threshold be $250 million? Should the revenue threshold be $100 million for registrants without a public float? Should the public float threshold be $200 million for registrants that determined in a prior year that they did not qualify as smaller reporting companies and seek to transition to smaller reporting company status? Should the revenue threshold be $80 million for registrants without a public float that determined in a prior year that they did not qualify as smaller reporting companies and seek to transition to smaller reporting company status? Should any of the proposed thresholds be higher or lower? Why or why not?

5. Should the smaller reporting company definition be based on both public float and revenue? Why or why not? If so, what should the public float and revenue thresholds be? If we required both thresholds, should the registrant maintain its smaller reporting company status until it exceeds both the public float and revenue thresholds or until it exceeds either threshold?

6. Should the definition be based on whether a registrant meets *either* a public float threshold or a revenue threshold? Why or why not?

7. Should the definition contain only a public float test, regardless of the registrant's revenues, rather than the current definition? Why or why not? If so, what should the threshold be?

8. Should we eliminate the public float test and instead apply only a revenue test? Why or why not? If so, what should the threshold be? Should we allow a revenue-only test as an alternative to the public float test and permit a registrant to choose which test to apply? Why or why not? If so, what should the thresholds be for each test?

9. Should we revise the method of calculating public float in our current rules? If so, how?

10. Should the smaller reporting company definition be based on market capitalization rather than public float? If so, what market capitalization should we use? How should we determine any new market capitalization thresholds? What would be the advantages or disadvantages of this approach?

11. Are there other criteria or measures for defining smaller reporting companies that we should consider? If so, what are they and what, if any, thresholds would be appropriate?

12. Should any thresholds in the smaller reporting company definition be indexed to adjust for inflation? If so, to what indicator should the thresholds be indexed and how frequently should they be adjusted?

13. If the thresholds are raised in the manner proposed, should the Commission re-visit the thresholds on a periodic basis to assess whether the thresholds are contributing to capital formation, liquidity and investor protection? If so, what criteria would be useful for assessing the efficacy of the thresholds and how frequently should re-assessments occur?

14. If the thresholds are raised, should larger registrants be limited in their ability to avail themselves of some of the scaled disclosure accommodations? Should any of the scaled disclosure requirements of Regulation S–K or Regulation S–X not be available for registrants at the higher end of the range in terms of public float or revenue? If so, which disclosure requirements and why? If so, would differences among the types of scaled disclosure accommodations adversely impact comparability across the larger group of registrants that would qualify as a smaller reporting company? Why or why not?

15. If we increase the thresholds in the smaller reporting company definition, should we eliminate the provision in the accelerated and large accelerated filer definitions that specifically excludes registrants that are eligible to use the smaller reporting company requirements under Regulation S–K for their annual or quarterly reports, as proposed? Why or why not?

16. If we increase the public float threshold in the smaller reporting company definition as proposed, should we also increase the public float threshold in the accelerated filer definition? Why or why not?

17. If we increase the public float and revenue thresholds in the smaller reporting company definition as proposed, should we also increase the thresholds in Exchange Act Rule 12g5–1(a)(7)?[70] Why or why not?

18. If we increase the revenue threshold in the smaller reporting company definition as proposed, should we also increase the threshold in Rule

---

[67] *See* Staff Section 404(b) Study at 107. At the same time, the staff's study recognized that registrants at the lower end of the studied range of $75 million and $250 million could be more likely to have characteristics more similar to non-accelerated filers (*i.e.*, registrants that are just under or just over the $75 million threshold are likely to have similar characteristics to one another). *See id.* at 4. The staff's study did not specifically assess whether registrants at the lower end of the group, such as those with a public float between $75 million and $125 million, might differ in relative benefits than registrants at the higher end.

[68] *See* Staff Section 404(b) Study at 112. Title I of the JOBS Act exempts EGCs from the Section 404(b) auditor attestation requirements, but EGC status is a temporary accommodation by Congress to lessen the burdens on new companies entering the public markets. Pub. L. 112–106, Sec. 103, 126 Stat. 306 (2012) (amending Section 404(b) of the Sarbanes-Oxley Act [Pub. L. 107–204, Sec. 404(b) 116 Stat. 745 (2002)]). Smaller reporting company status, however, is not time-limited.

[69] For a discussion of the academic research, *see* Section III.C.

[70] Exchange Act Rule 12g5–1(a)(7) [17 CFR 240.12g5–1(a)(7)] provides issuers of securities in Tier 2 Regulation A offerings with an exemption from the mandatory registration requirements of Exchange Act Section 12(g) provided certain conditions are met, including a requirement that the issuer have a public float of less than $75 million as of the last business day of its most recently completed semiannual period, or, in the absence of a public float, annual revenues of less than $50 million as of its most recently completed fiscal year.

3–05 of Regulation S–X? [71] Why or why not?

III. Economic Analysis

As discussed above, we are proposing amendments to the definition of "smaller reporting company" as used in our rules and regulations. The proposed amendments are intended to promote capital formation and reduce compliance costs for smaller registrants by expanding the number of smaller registrants that are eligible to deliver scaled disclosure to their investors, while maintaining investor protections.

Registrants with less than $250 million (vs. currently $75 million) in public float would qualify, as would registrants with zero public float if their revenues were below $100 million (vs. currently $50 million) in the previous year. We are sensitive to the costs and benefits of the proposed amendments. In this economic analysis, we examine the existing baseline, which consists of the current regulatory framework and market practices, and discuss the potential benefits and costs of the proposed amendments, relative to this baseline, and their potential effects on efficiency, competition and capital formation.[72] We also consider the potential costs and benefits of reasonable alternatives to the proposed amendments. Where practicable, we attempt to quantify the economic effects of the proposed amendments; however, in certain cases, we are unable to do so because either we lack the necessary data or the economic effects are not quantifiable. In these cases, we provide a qualitative assessment of the likely economic effects.

A. Baseline and Potential Affected Parties

In calendar year 2015, of the 7,557 registrants that filed a Form 10–K with the Commission, 3,183 (42.1% of all registrants) were eligible to claim smaller reporting company status. Of those, 2,900 (38.4% of all registrants) claimed smaller reporting company status. Under the current definition, a registrant may qualify as a smaller reporting company under either a public float threshold or an annual revenue threshold if the public float is zero. Of the 2,900 smaller reporting companies, 2,241 companies (29.7% of all registrants) qualified under the $75 million public float threshold and 659 companies (8.7% of all registrants) qualified under the $50 million revenue threshold.[73] Of the 2,900 smaller reporting companies, 490 (6.5% of all registrants) also claimed EGC status.[74]

Table 1 summarizes the number and percentage of registrants that claimed smaller reporting company status in each calendar year over the 2013–2015 period.

TABLE 1—SMALLER REPORTING COMPANIES (SRCS) IN 2013–2015 PERIOD

Filing year	Total # of registrants	# of SRCs	% of total	Qualified based on public float (% of total)	Qualified based on revenue (% of total)
2013	7,624	3,380	44.3	33.5	10.8
2014	7,642	3,179	41.6	32.7	8.9
2015	7,557	2,900	38.4	29.7	8.7

Table 2 shows that, while smaller reporting companies account for a substantial percentage of the total number of registrants in calendar year 2015, they account for less than one percent of the entire public float, market value and revenue of all registrants.[75]

TABLE 2—SIZE PROXIES FOR SMALLER REPORTING COMPANIES (SRCS) IN 2015

	Public float	Market value	Revenue
Mean	$17.0 million	$33.6 million	$21.3 million.
Median	8.8 million	13.0 million	0.21 million.
Aggregate size	38.0 billion	79.3 billion	61.9 billion
% of the aggregate size of all registrants.	0.01%	0.31%	0.37%.

---

[71] Rule 3–05 of Regulation S–X provides the requirements for financial statements of businesses acquired or to be acquired. Paragraph (b)(2)(iv) allows registrants to omit such financial statements for the earliest of three fiscal years required if the net revenues of the business to be acquired are less than $50 million. The $50 million threshold is based on the revenue threshold in the smaller reporting company definition. *See* Smaller Reporting Company Adopting Release.

[72] Section 23(a)(2) of the Exchange Act requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act direct us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[73] Based on analysis by DERA. Staff obtained the smaller reporting company status and public float data from corporate financial reports filed with the Commission using eXtensible Business Reporting Language (XBRL), available at: *http://www.sec.gov/dera/data/financial-statement-data-sets.html.* Staff also extracted the smaller reporting company status and public float directly from Forms 10–K using a computer program. For robustness, staff compared the smaller reporting company status and public float information between the two sources and corrected discrepancies. Staff extracted annual revenue data from the Compustat database and XBRL filings. Registrants transitioning out of smaller reporting company status that reported either public float greater than $75 million or zero public float but revenue greater than $50 million were not counted as smaller reporting companies.

[74] Staff determined whether a registrant claimed EGC status by parsing several types of filings (for example, Forms S–1, S–1/A, 10–K, 10–Q, 8–K, 20–F/40–F, and 6–K) filed by that registrant.

[75] Market value and revenue data as of the fiscal year end are obtained from Compustat. Where revenue data was unavailable from Compustat, staff obtained the information directly from XBRL data filed with the registrants' Forms 10–K. Where revenue data was unavailable in XBRL, staff obtained the data directly from the registrants' Forms 10–K. The summary statistics on revenue are for all current smaller reporting companies, not just those qualifying under the revenue threshold.

Table 3 shows the distribution of registrants that claimed smaller reporting company status in calendar year 2015 using the Fama-French 49-industry classification.[76] The "Business Services" industry accounts for 11.7% of all smaller reporting companies, followed by "Financial Trading" (9.5%), "Banking" (7.8%), "Pharmaceutical Products" (6.8%), "Petroleum and Natural Gas" (6.9%), and "Computer Software" (5.6%).[77] We note that industries with a larger fixed component of operating costs, such as shipping, defense, and aircraft, tend to have fewer smaller reporting companies.

TABLE 3—INDUSTRY DISTRIBUTION OF SMALLER REPORTING COMPANIES (SRCS) IN 2015

Industry ID	Industry	# of SRCs	% of all SRCs	Industry ID	Industry	# of SRCs	% of all SRCs
1	Agriculture	27	0.9	26	Defense	2	0.1
2	Food Products	40	1.4	27	Precious Metals	44	1.5
3	Candy & Soda	3	0.1	28	Non-Metallic and Industrial Metal Mining.	110	3.8
4	Beer & Liquor	19	0.7	29	Coal	4	0.1
5	Tobacco Products	8	0.3	30	Petroleum and Natural Gas.	200	6.9
6	Recreation	21	0.7	31	Utilities	18	0.6
7	Entertainment	60	2.1	32	Communication	50	1.7
8	Printing and Publishing.	11	0.4	33	Personal Services	50	1.7
9	Consumer Goods	53	1.8	34	Business Services	337	11.6
10	Apparel	18	0.6	35	Computers	24	0.8
11	Healthcare	39	1.3	36	Computer Software.	163	5.6
12	Medical Equipment	102	3.5	37	Electronic Equipment.	104	3.6
13	Pharmaceutical Products.	198	6.8	38	Measuring and Control Equipment.	52	1.8
14	Chemicals	49	1.7	39	Business Supplies	3	0.1
15	Rubber and Plastic Products.	20	0.7	40	Shipping Containers.	3	0.1
16	Textiles	5	0.2	41	Transportation	21	0.8
17	Construction Materials.	30	1.0	42	Wholesale	84	2.9
18	Construction	24	0.8	43	Retail	81	2.8
19	Steel Works	6	0.2	44	Restaurants, Hotels, Motels.	28	1.0
20	Fabricated Products.	3	0.1	45	Banking	225	7.8
21	Machinery	58	2.0	46	Insurance	25	0.9
22	Electrical Equipment.	39	1.3	47	Real Estate	96	3.3
23	Automobiles and Trucks.	26	0.9	48	Financial Trading	277	9.5
24	Aircraft	4	0.1	49	Other	34	1.2
25	Shipbuilding, Railroad Equipment.	2	0.1	....	....	....	....

By increasing the public float threshold from $75 million to $250 million and the annual revenue threshold from $50 million to $100 million in the smaller reporting company definition, the proposed amendments would permit more registrants to qualify as smaller reporting companies. To estimate the number of additional registrants that could be potentially affected by the proposed amendments, we use the public float data from Form 10–K filings and revenue data from Compustat to determine the number of existing registrants that could qualify as a smaller reporting company under the proposed new thresholds. Under the proposed amendments, we estimate that 782 additional registrants could be eligible for smaller reporting company status, 751 of which have a public float between $75 million and $250 million and 31 of which have zero public float and annual revenues between $50 million and $100 million.

The 782 additional registrants have an average public float of $149 million (median $144 million), an average market value of $257 million (median $195 million), and average revenues of $248 million (median $80 million). Of the 782 potentially eligible registrants, 153 currently are EGCs and are eligible for certain scaled disclosure under Title I of the JOBS Act, including the scaled executive compensation disclosures available to smaller reporting companies under Item 402 of Regulation S–K. The 782 additional registrants tend to be concentrated in the following industries: "Banking" (17.4%),

---

[76] Using Standard Industry Classification (SIC) codes, Professors Eugene Fama and Kenneth French have sorted companies into 48 main industries, plus a residual "Other" industry. This classification is commonly used in the financial economics literature and is available at: *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html.*

[77] Smaller reporting companies account for 57% of all 10–K filers in "Business Services," 37% in "Financial Trading," 20% in "Banking," 39% in "Pharmaceutical Products," 50% in "Petroleum and Natural Gas" and 47% in "Computer Software," suggesting that these industries all have a fairly high concentration of small registrants.

"Pharmaceutical Products" (13.4%), "Financial Trading" (9.0%), "Business Services" (6.1%) and "Electric Equipment" (4.9%). If all 782 registrants were to claim smaller reporting company status, the proposed amendments would lead to a noticeable increase in the presence of "Banking" and "Pharmaceutical Products" registrants in the pool of smaller reporting companies.

We estimate that the proposed amendments would lead to an expansion of the smaller reporting company pool. Under the proposed rules, 41.8% of the total registrants would qualify using a public float threshold of less than $250 million, while currently 31.9% of the total registrants reported having a public float of less than $75 million. In addition, 10.7% of the total registrants would qualify using a revenue threshold of $100 million, while currently 10.3% of the total registrants reported having less than $50 million in revenues.[78] The 41.8% of registrants qualifying under the public float threshold would be in line with the 42% of registrants that qualified under the public float threshold when the Commission first established the definition of smaller reporting company. Raising the percentage of registrants qualifying under the public float threshold to the 2007 level would reflect the real growth in the stock market as well as inflation in nominal prices in the past decade. We do not have sufficient data to be able to compare the percentage of registrants qualifying under the revenue threshold when the Commission first established the definition of smaller reporting company to the 10.7% that would qualify using a revenue threshold of $100 million. Table 4 summarizes the size of the potential smaller reporting companies in terms of public float, market value and annual revenue under the proposed amendments.

TABLE 4—SIZE PROXIES FOR THE POTENTIALLY ELIGIBLE SMALLER REPORTING COMPANIES UNDER THE PROPOSED AMENDMENTS

	Public float	Market value	Revenue
Mean	$50.0 million	$111.1 million	$74.2 million.
Median	$20.9 million	$29.1 million	$1.5 million.
Aggregate size	$157.8 billion	$374.1 billion	$294.2 billion.
% of the aggregate size of all registrants[79].	0.03%	1.46%	1.75%.

B. Potential Economic Effects

1. Introduction

The primary benefit stemming from the proposed amendments would be a reduction in compliance costs for those registrants that would newly qualify for smaller reporting company status. If the compliance costs have a fixed cost component, which typically burdens smaller registrants disproportionately, the cost savings may be particularly helpful for these registrants.

As a secondary effect of the proposed amendments, a lower disclosure burden could spur growth in smaller registrants to the extent that the compliance cost savings and other resources (*e.g.*, managerial effort) devoted to disclosure and compliance are productively deployed in alternative ways. It also could encourage capital formation because companies that may have been hesitant to go public may choose to do so if they face reduced disclosure requirements.[80]

With respect to costs, the proposed amendments would reduce the amount of information available to investors, thereby potentially reducing investor protection. A decrease in the amount of disclosure could increase the information asymmetry between investors and company insiders, leading to lower liquidity and higher costs of capital for the affected registrants. For example, an academic study[81] finds that during the three-month period following the establishment of the smaller reporting company definition, registrants with public floats between $25 million and $75 million that claimed smaller reporting company status experienced a significant reduction in liquidity relative to comparable companies. Also, under the proposed amendments, the newly eligible smaller reporting companies would not be required to provide certain executive compensation disclosure requirements, potentially lowering corporate governance transparency of these registrants.[82]

It is important to note that the smaller reporting company thresholds establish eligibility for but do not mandate reliance on any of the scaled disclosure accommodations.[83] If the proposed amendments were adopted, we expect that the newly eligible registrants would weigh the costs and benefits of scaled disclosure for themselves and decide whether to take advantage of any of the scaled disclosure accommodations. To the extent that there may be agency concerns, expanding smaller reporting company eligibility may provide opportunities for adverse selection in a greater number of registrants, that is, registrants whose outside investors would have benefited from more disclosure may choose the lower disclosure requirement once becoming eligible. The net benefit for the newly eligible registrants would ultimately depend on the specific facts and circumstances.

---

[78] Using 2015 data, we estimated that, of 7,557 total registrants that filed 10-Ks, 3,965 registrants would potentially qualify as smaller reporting companies under the proposed thresholds. In particular, we estimated that 3,159 registrants reported public float below $250 million in 2015, resulting in a percentage of 41.8% (3,159/7,557) of registrants potentially qualifying as smaller reporting companies under the proposed public float threshold, and 2,408 registrants reported a public float below $75 million in 2015, resulting in a percentage of 31.9% (2,408/7,557). Also, we estimated that 806 registrants reported annual revenues below $100 million in 2015, resulting in a percentage of 10.7% (806/7,557) of registrants potentially qualifying as smaller reporting companies under the proposed revenue threshold, and 775 registrants reported annual revenues below $50 million in 2015, resulting in a percentage of 10.3% (775/7,557).

[79] The percentages in Table 4 are generally in line with the percentages in 2006 prior to the adoption of the current smaller reporting company definition. Because public float information in 2006 was not easily available, we use the free float values from Thomson Reuter's Datastream database instead, which excludes from a company's total market value all insider ownership and 5% institutional ownership. We estimate that in 2006 the total number of registrants with free float less than $75 million accounted for 0.37% of the aggregate free float, 1.81% of the aggregate market value, and 1.92% of the aggregate revenue.

[80] The debate on the impact of the Sarbanes-Oxley Act on companies' propensities to go private (Engel et al. (2007)), go dark (Leuz et al. (2008)), and go public (Bova et al., (2014)) highlights the importance of compliance costs in companies' decisions to participate in the public capital market. *See* Ellen Engel, Rachel M. Hayes, and Xue Wang, *The Sarbanes-Oxley Act and Firms' Go Private Decisions* 44 J. Account. & Econ. 116 (2007); Christian Leuz, Alexander J. Triantis, and Tracy Yue Wang, *Why Do Firms Go Dark? Causes and Economic Consequences of Voluntary SEC Deregistrations,* 45 J. Account. & Econ. 181 (Mar. 1, 2008); and *Francesco* Bova, Miguel Minutti-Meza, Gordon D. Richardson, and Dushyantkumar Vyas, *The Sarbanes-Oxley Act and Exit Strategies of Private Firms,* 31 Contemporary Account. Research 818 (Jan. 12, 2014).

[81] *See* Lin Cheng, Scott Liao, and Haiwen Zhang, *Commitment Effect versus Information Effect of Disclosure: Evidence from Smaller Reporting Companies,* 88 Account. Rev. 1239 (Jul. 2013).

[82] For a review of the effects of executive compensation disclosures on compensation practices, *see* Michael Jensen, Kevin Murphy, and Eric Wruck, *Remuneration: Where We Have Been, How We Got to Here, What Are the Problems, and How to Fix Them,* Working paper, Harvard Business School (2004), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=561305. See also* Benjamin E. Hermalin and Michael S. Weisbach, *Information Disclosure and Corporate Governance,* 67 J. Fin. 195 (2012), and Anya Kleymenova and A. Irem Tuna, *Regulation of Compensation,* Working Paper, University of Chicago (2016), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755621.*

2. Estimation of Potential Costs and Benefits

In this section, we estimate the incremental costs and benefits associated with smaller reporting company-related scaled disclosures, using a multivariate empirical analysis. The challenge is to isolate the economic effects of scaled disclosures from the effect of other significant accommodations, such as the exemption from Section 404(b) that is currently available to all smaller reporting companies. For this reason, we cannot isolate the costs and benefits associated with scaled disclosures using data from current smaller reporting companies.[84] Under the proposed amendments, the newly eligible smaller reporting companies would be able to provide scaled disclosures but would continue to be subject to Section 404(b) as accelerated filers.

It is possible, however, to isolate the effects of scaled disclosures using 2006 – 2009 data. This is because, as a result of the rules that established the smaller reporting company category in 2007, registrants with public float between $25 million and $75 million experienced no change in the Section 404(b) exemption but became eligible for the smaller reporting company scaled disclosures. Our empirical methodology is a difference-in-difference estimation between a treatment group and a comparison group.[85] In particular, the treatment group (Treatment Group) consists of registrants with public float between $25 million and $75 million that claimed smaller reporting company status in 2008. Two natural comparison groups exist. The first comparison group (Control Group 1) consists of registrants that did not qualify for smaller reporting company status because they had public float just above $75 million (between $75 million and $125 million).[86] The second comparison group (Control Group 2) consists of registrants with public float and revenues below $25 million that were already eligible for scaled disclosures at that time and thus not affected by the Commission's 2007 rules.[87]

To analyze the economic effects of eligibility for scaled disclosures resulting from the Commission's 2007 rules, we compare the Treatment Group with Control Group 1 and Control Group 2 in the following areas: cost savings, information environment, liquidity and growth. We then use the analysis to extrapolate the likely effects of the expansion of eligibility for smaller reporting company status under the proposed amendments. In extrapolating the likely effects, we place particular emphasis on the comparison between the Treatment Group and Control Group 1, which represents a closer group in size to the newly eligible smaller reporting companies under the proposed amendments.

i. Potential Cost Savings: Estimates Based on Changes in Audit Fees

The cost savings from scaled disclosures could include savings of resources that would be used for the relevant parts of disclosures, for example, managerial and employee time, other internal resources, and audit fees related to certain disclosures. Among these potential savings, changes in audit fees are readily quantifiable. To the extent that the scaled disclosure accommodations impact information that must be audited, scaled disclosures of the audited portions of the filings should lead to a reduction in audit expenses. Because many of the scaled disclosures available to smaller reporting companies relate to governance and compensation disclosures that are not subject to audit, we acknowledge that a reduction in audit fees is likely a small part of the total cost savings associated with scaled disclosures. However, quantifying the change in audit fees can potentially help us estimate the entire cost savings.

To estimate the cost savings from the proposed amendments, we first examine changes in the audit fees of registrants that were newly eligible to use scaled disclosures as a result of the 2007 rules relative to those in the comparison groups between the pre-rule 2006 – 2007 period and the post-rule 2008 – 2009 period. Audit fee data come from the Audit Analytics database. We include only registrants that had both pre-rule and post-rule audit fee data in the analysis. Table 5 reports the main results.

---

[83] If a disclosure requirement applicable to smaller reporting companies is more stringent than for non-smaller reporting companies, however, smaller reporting companies must comply with the more stringent standard. Item 404 is the only Regulation S–K disclosure requirement that could be more stringent.

[84] Although there exists a clear threshold for eligibility, we cannot use the well-known empirical method of Regression Discontinuity Design to assess the treatment effect of scaled disclosures for smaller reporting companies. This method requires that the assignment of the treatment among registrants is "as good as random" around the threshold. Under this assumption, the registrants that receive the treatment of scaled disclosure (*i.e.*, smaller reporting companies) should be comparable to those registrants that do not receive the treatment because their public float is just above the $75 million threshold. Given the exemption from Section 404(b) available to current smaller reporting companies with public float below $75 million, this assumption does not hold.

[85] Difference-in-difference is a technique used to calculate the effect of a variable on a treatment group versus a control group. In particular, in the analysis below, the average change over time in the outcome of a variable for the treatment group is compared to the average change over time in the outcome of that variable for the control group.

[86] This would allow for a $50 million bandwidth similar to that used in the Commission's 2007 rules, which raised the threshold for relief from $25 million to $75 million.

[87] The comparison groups help control for confounding factors that may also independently affect the economic effects associated with scaled disclosures. While we determine Treatment Group and Control Group 1 based on public float alone, we use both public float and revenues to determine Control Group 2, because, prior to the Commission's 2007 rules, registrants with public float below $25 million were not eligible for scaled disclosures if their revenues exceeded $25 million.

TABLE 5—PRE- AND POST-COMMISSION'S 2007 RULES AUDIT FEES FOR SMALLER REPORTING COMPANIES (SRCS) AND COMPARISON GROUPS

Fiscal year	Treatment group (SRCs with public float $25m–$75m)	Control group 1 (Non-SRCs with public float $75m–$125m)	Control group 2 (SRCs with public float and revenues below $25m)
Avg. 2006–2007	$311,105	$676,194	$113,757
Avg. 2008–2009	$267,252	$654,463	$101,854
Number of Observations	1,315	694	962

For smaller reporting companies with public floats between $25 million and $75 million, in 2008–2009, average audit fees declined by $43,853. In contrast, both Control Group 1, which just missed eligibility for claiming smaller reporting company status, and Control Group 2, which already was subject to scaled disclosures, experienced a much smaller decline in average audit fees after the adoption of the Commission's 2007 rules: $21,731 and $11,903, respectively. Thus, the difference-in-difference estimate of the savings in audit fees associated with scaled disclosures is between $22,122 and $31,950 per smaller reporting company. Both estimated differences differ significantly from zero. Although two different control groups are used to control for all other factors that may have caused the changes in audit fees in smaller registrants during the 2006–2009 period,[88] the effect of the 2008 financial crisis may not be completely ruled out and could make the estimated savings in audit fees appear larger than they actually were.

We can also estimate the savings in audit fees in terms of a percentage reduction, instead of a dollar value.[89] The audit fees for the Treatment Group declined by 14.1% in the 2008–2009 period relative to the 2006–2007 period, but only by 3.2% for Control Group 1 and 10.5% for Control Group 2. Thus, the difference-in-difference estimate of the treatment effect in terms of a percentage reduction is a 3.6% to 10.9% reduction of the audit fees.

For the 782 newly eligible registrants that we estimate would be potentially affected by the proposed amendments, the average audit fees were $683,607 in fiscal year 2014. Thus, if we use the dollar value estimates of the audit fee savings, then the estimated reduction in audit fees would be between $24,353 and $35,172 for this group, which are the inflation-adjusted values of the audit fee savings estimates in 2008 and 2009.[90] This estimate for savings on audit fees for the newly eligible registrants would be about 3.6% (=$24,353/$683,607) to 5.1% (=$35,172/$683,607) of the audit fees. If we use the percentage reduction estimates, then the estimated reduction in the audit fees would range from $24,610 (=$683,607 × 3.6%) to $74,513 (=$683,607 × 10.9%) for the Treatment Group.

We recognize that our analysis is subject to a number of assumptions, some of which may not be fully applicable when estimating the possible current change in audit expenses as a result of the proposed amendments.[91] In addition, we recognize that audit expenses are only one component of costs for registrants and that changes in audit fees do not capture the full range of potential cost savings stemming from scaled disclosures. There are cost savings apart from the audit, such as cost savings resulting from a smaller reporting company not being required to prepare compensation discussion and analysis (CD&A) and from other scaled disclosures in Item 402 of Regulation S–K. These cost savings likely will include both internal cost savings (such as employee and managerial time and resources) and external cost savings from fees for other outside professionals such as attorneys. Given the nature of scaled disclosures available to smaller reporting companies, we expect these other cost savings to be much larger than the cost savings in audit fees. Accordingly, we assume that 25% of the total cost savings from scaled disclosure comes from savings in audit fees and 75% of the savings comes from reduction in other expenses. Given this assumption, we estimate total annual cost savings per newly eligible registrant to be between $98,439 (=$24,610 × 4) and $298,052 (=$74,513 × 4), which is 0.04% (=$98,439/$246.9 million) to 0.12% (=$298,052/$246.9 million) of the average revenue of the newly eligible registrants.

ii. Information Environment, Liquidity and Growth

A registrant's information environment can be measured by the amount of useful information available to investors and the quality of information. To gauge the potential effects on the degree of external information production about the registrant that could benefit investors, we determine a registrant's percentage of institutional ownership, total 5% block institutional ownership, and analyst coverage (*i.e.*, whether a registrant is covered by at least one analyst and the number of analysts).

To measure disclosure quality, we use four discretionary accrual measures commonly used in the accounting literature as proxies for earnings management and the incidence of material restatements (based on when the restatement happened—beginning year—and when the restatement was reported—filing year). Scaled disclosure may contribute to lowering the overall quality of the information environment, which is proxied here by the propensity for earnings management and the incidence of material restatements.[92] The data on restatements are from the Audit Analytics database. A material restatement is defined as a restatement that is reported under Item 4.02 of Form 8–K.

---

[88] For example, among other factors, we note that the Commission approved Public Company Accounting Oversight Board Auditing Standard No. 5 regarding Audits of Internal Control over Financial Reporting (AS 5). Among other things, AS 5 was intended to reduce unnecessary costs by making the audit scalable to fit the size and complexity of company. AS 5 became effective in November 2007 and registrants with fiscal years ending between July and November were allowed to avail themselves of the provision earlier. The adoption and implementation of AS 5 in 2007 could have had an impact on the audit fees of all companies subject to Section 404(b). Given that in our analysis both Treatment Group and Control Group 1 were affected by AS 5, however, the difference-in-difference methodology should control for the potential effects of AS 5 on audit fees. In addition, based on companies' fiscal year end, we have no reason to believe that early adopters were more or less concentrated in Treatment Group than Control Group 1.

[89] If there is a fixed (dollar value) component in audit expenses that apply to registrants of all sizes, then the estimates under this alternative approach can be viewed as the upper bound of the potential audit fee savings.

[90] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

[91] Estimates based on data from 2006 to 2009 may not be directly applicable to newly eligible registrants under the proposed amendments. On the one hand, because auditors may charge larger registrants more for auditing the same disclosure items, our estimate could be viewed as a conservative estimate on the potential savings of audit fees for the newly eligible smaller reporting companies. On the other hand, if there were any increased competition in the auditing industry since 2009, then it could have led to lower audit expenses for the same disclosure items. Thus, our estimate could be higher or lower than the actual savings on audit fees for smaller reporting companies in 2008 and 2009.

To examine the potential effects on liquidity, we focus on the share turnover ratio, which is calculated by dividing the total number of shares traded over a period by the number of shares outstanding. To assess the effects of scaled disclosures on growth, we examine a registrant's capital investment, which is measured by the capital expenditures to assets ratio, as a proxy for real growth. Because there is a high concentration of smaller reporting companies in industries for which R&D investment is important (*e.g.*, pharmaceutical products and electronic equipment), we also examine a registrant's investment in R&D. Finally, we examine asset growth, which is the growth rate in book assets, which could capture a registrant's growth through both capital investment and acquisition.

Table 6 reports the estimated treatment effect. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The average change in the metric for the Treatment Group, from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure, and (2) the average change in the metric between the same periods for Control Group 1, which was never eligible for scaled disclosure. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The average change in the metric for the Treatment Group from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure and (2) the average change in the metric between the same periods for Control Group 2, which had been eligible for scaled disclosure for both periods.[93]

This table shows the scaled disclosure effect for smaller reporting companies (SRCs) on information environment, liquidity, and growth. Treatment Group consists of SRCs with public float between $25 million and $75 million in fiscal year 2008. Control Group 1 consists of non-SRCs with public float between $75 million and $125 million. Control Group 2 consists of small business issuers with public float and revenues below $25 million. Institutional Ownership is total percentage institutional ownership. Block Institutional Ownership is total block (5%) institutional ownership. Number of Analysts is the number of analysts following a registrant. Analyst Coverage Dummy is a dummy variable indicating the existence of analyst following. Earnings Mgmt. 1–4 are four different discretionary accruals measures. Earnings Mgmt. 1 follows Kothari, Leone, and Wasley (2005), and Earnings Mgmt. 2–4 follows Dechow, Sloan, and Sweeney (1995).[94] Material Restatement (Filing Year) is a dummy variable that equals one if a registrant discloses restatement under Item 4.02 of Form 8–K in that year, and zero otherwise. Material Restatement (Beginning Year) is a dummy variable that equals one if the material reason for the restatement under Item 4.02 of Form 8–K originated in that year, and zero otherwise. Share Turnover is the ratio of shares traded over shares outstanding. Capital Investment is capital expenditures over book assets. R&D investment is R&D expenditures over revenue. Asset Growth is the annual growth rate of book assets. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

TABLE 6—EFFECT OF SCALED DISCLOSURES ON INFORMATION ENVIRONMENT, LIQUIDITY AND GROWTH

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		
External Information Production		
Institutional Ownership	*** −0.052	*** −0.022
Institutional Block Ownership	** −0.016	−0.002
Number of Analysts	−0.179	−0.068
Analyst Coverage Dummy	*** −0.099	***0.087
Information Environment:		
Disclosure Quality		
Earnings Mgmt. 1	0.025	0.015
Earnings Mgmt. 2	0.024	0.013
Earnings Mgmt. 3	0.020	0.024
Earnings Mgmt. 4	0.018	0.023
Material Restatement (Filing Year)	0.018	0.015
Material Restatement (Beginning Year)	**0.036	0.016
Liquidity		
Share Turnover Ratio	−0.063	−0.052
Growth		
Capital Investment	0.005	−0.005
R&D Investment	−0.035	−0.002

---

[92] In using these proxies, we do not mean to suggest that scaled disclosure would be expected to directly cause an increase in earnings management or an increased incidence of material restatements, as there is little direct connection between the types of disclosure governed by our scaled disclosure requirements and the disclosure affected by a restatement.

[93] Specifically, for each number reported in Table 6, we estimate the following equation:

$$y = a + b * SRC + c * After + d * [SRC * After]$$

where the single-letter terms "*a*" to "*d*" are coefficients to be estimated; "SRC" equals one for the treatment group and zero for the comparison group; and "After" equals one for fiscal years 2008 and 2009 and zero for fiscal years 2006 and 2007. The treatment effect is reflected in the coefficient estimate *d*, which is the differential value of the variable *y* for treated firms following the start of the treatment. A statistically negative estimate of *d* is consistent with a reduction in the value of the dependent variable *y* (Institutional Ownership, Institutional Block Ownership, etc.) for treated firms.

[94] *See,* Patricia M. Dechow, Richard G. Sloan, and Amy P. Sweeney, *Detecting Earnings Management* 70 Account. Rev. 193 (1995); S.P. Kothari, Andrew J. Leone, and Charles E. Wasley, *Performance Matched Discretionary Accrual Measures,* 39 J. Account. & Econ. 163 (2005).

TABLE 6—EFFECT OF SCALED DISCLOSURES ON INFORMATION ENVIRONMENT, LIQUIDITY AND GROWTH—Continued

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Asset Growth Rate	−0.005	*** −0.282

The results in Table 6 suggest that the scaled disclosures had a negative effect on institutional ownership. The Treatment Group, which became eligible for scaled disclosures, experienced a 5.2% greater decrease in average institutional ownership from period to period than the companies in Control Group 1, which remained ineligible for scaled disclosures, and a 2.2% greater decrease in average institutional ownership from period to period than the companies in Control Group 2, which were eligible for scaled disclosures throughout both periods.

The results reflect a positive effect on material restatements measured based on when such restatement was triggered (material restatement by beginning year) in smaller reporting companies, while the effect on analyst coverage is inconclusive. Smaller reporting companies tend to lose analyst coverage relative to comparable companies that just missed eligibility, but they gain coverage relative to even smaller companies that already enjoyed scaled disclosures. There is no statistically significant effect on earnings quality as captured by discretionary accruals measures or the incidence of material restatement by filing year. Overall, the evidence suggests a modest, but statistically significant, negative effect of scaled disclosure on smaller reporting companies' overall information environment.

The effect of scaled disclosures on share turnover ratio is negative but statistically insignificant, suggesting no significant effect of scaled disclosures on smaller reporting companies' liquidity.[95] Because the newly eligible registrants are larger in market capitalization and have more institutional ownership and analyst coverage than the current smaller reporting companies, we do not expect the proposed amendments to have a significantly negative impact on their liquidity.

The results in Table 6 indicate no clear difference between smaller reporting companies and comparable registrants in terms of changes in capital investment and R&D investment. The effect on asset growth rate is mixed. There is no significant difference between the Treatment Group companies and Control Group 1, but compared to Control Group 2, Treatment Group companies had deterioration in asset growth rate after the 2007 rules. Overall, our empirical analysis suggests that scaled disclosures have only a minimal effect on growth in current smaller reporting companies relative to comparable companies. Thus, we also do not expect any significant effect of the scaled disclosures on the growth of the newly eligible registrants under the proposed amendments.

iii. Conclusion

Taken together, our empirical analysis suggests that, for most of the newly eligible smaller reporting companies under the proposed amendments, scaled disclosures may generate a modest, but statistically significant, amount of cost savings in terms of the reduction in compliance costs, a modest, but statistically significant, deterioration in some of the proxies used to assess the overall quality of information environment, and a muted effect on the growth of the registrant's capital investments, investments in R&D and assets.

3. Affiliated Ownership and Adverse Selection

In general, holding market value constant, the use of public float to define eligibility favors registrants with more affiliated ownership. If we consider two registrants with the same market value but different affiliated ownership, the one with greater affiliated ownership will have a lower public float, which is the value of non-affiliated ownership, and thus will be more likely to qualify for smaller reporting company status based on the public float threshold. This could be problematic if the adverse selection problem creates a conflict of interest between affiliated owners—who are often the decision makers—and non-affiliated owners—who are often the uninformed minority shareholders on whom reduced disclosure would have a greater impact. We examine whether the effects of scaled disclosure on registrants' information environment, liquidity, and growth depend on the percentage of affiliated ownership, which is the market value of affiliated equity shares divided by the registrant's total market value of equity. The average affiliated ownership is 43% for smaller reporting companies in the treatment group in years 2008 and 2009 (median 42%).

The results are reported in Table 7. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The difference between the average metric of registrants in the Treatment Group with affiliated ownership that is higher than the group median and that of the registrants in the Treatment Group with affiliated ownership that is lower than the group median and (2) the difference between the average metric of registrants in Control Group 1 with affiliated ownership that is higher than the group median and that of the registrants in Control Group 1 with affiliated ownership that is lower than the group median. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The difference between the average metric for the higher-than-median affiliated ownership registrants and that of the lower-than-median affiliated ownership registrants in the Treatment Group and (2) the difference between the average metrics for the same sectors of Control Group 2.[96]

---

[95] In contrast, Chang et al. (2013) did find a negative and significant effect of the Commission's 2007 rules on smaller reporting companies' liquidity. The difference in the results could stem from the use of a different empirical methodology, different sample and sample period. Chang et al. (2013) excluded financial companies. While the authors examined a pre-rule period of April to June of 2007, we included the entire 2006 and 2007 periods. Also, while the authors examined a post-rule period of February to August of 2008, we included the entire 2008 and 2009 periods. In addition, the authors focus on a set of illiquidity measures, while we focus on the share turnover ratio, a commonly used liquidity measure.

[96] Specifically, for each number reported in Table 7, we estimate the following equation:

$$y = a + b * SRC + c * After + d * HighAff + e * [SRC * After] + f * [SRC * HighAff + g * [After * HighAff] + h * [SRC * High\ Aff * After]$$

where the single-letter terms "*a*" to "*h*" are coefficients to be estimated. "After" and "SRC" are defined in note 93. "HighAff" is a dummy variable equal to one if the firm's affiliated ownership is greater than the sample median of 0.42; otherwise, "HighAff" is equal to zero. The treatment effect of interest is measured by the coefficient *h*, which is the differential value of the variable *y* for treated firms with high affiliated ownership, following the start of the treatment. *See also* note 93.

This table shows the estimated difference in the scaled disclosure effect on smaller reporting companies with high affiliated ownership and those with low affiliated ownership. Affiliated ownership is the percentage of a registrant's market value of equity that is owned by affiliated parties (*i.e.*, corporate insiders and 10% block owners). Companies with high (low) affiliated ownership include companies with affiliated ownership above (below) the sample median. A negative and significant estimate means that scaled disclosures have a more negative effect on smaller reporting companies with high affiliated ownership than on those with low affiliated ownership. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

TABLE 7—AFFILIATED OWNERSHIP AND ADVERSE SELECTION

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		
External Information Production		
Institutional Ownership	***−0.127	*−0.110
Institutional Block Ownership	**−0.079	*−0.126
Number of Analysts	**−0.742	**1.277
Analyst Coverage Dummy	−0.052	**0.500
Information Environment:		
Disclosure Quality		
Earnings Mgmt. 1	0.010	0.286
Material Restatement (Filing Year)	0.038	−0.040
Material Restatement (Beginning Year)	**0.084	0.001
Liquidity		
Share Turnover Ratio	0.052	0.059
Growth		
Capital Investment	**0.029	0.049
R&D Investment	0.014	−0.756
Asset Growth Rate	0.136	−1.485

Our analysis suggests that affiliated ownership may exacerbate the potential negative effects of scaled disclosure on external information production by professionals such as institutional investors. There is also some evidence that larger affiliated ownership may exacerbate the adverse effect of scaled disclosure on material restatements measured based on when such restatement was triggered in smaller reporting companies (relative to Control Group 1). At the same time, scaled disclosures tend to have a more positive effect on smaller reporting companies' capital investment when affiliated ownership is higher. Overall, there is inconclusive evidence that affiliated ownership is associated with adverse selection in current smaller reporting companies. For the 782 newly eligible registrants that would potentially be affected by the proposed amendments, the average affiliated ownership is 34.5% of market capitalization, lower than for the current smaller reporting companies (47.6% in 2015). Thus, any agency concerns arising from affiliated ownership should have a lower impact for the newly eligible registrants than for the current smaller reporting companies.

4. Effects on Efficiency, Competition and Capital Formation

The proposed amendments may have competitive effects. On one hand, the proposed amendments may reduce the potential disadvantage that the newly eligible registrants have relative to the current smaller reporting companies that already use the scaled disclosure requirements. The proposed amendments may also increase the competitive advantage of the newly eligible registrants relative to unregistered companies that compete with them in the product market. However, because there is no clear evidence that scaled disclosures have a significant effect on the growth of current smaller reporting companies, we expect these potentially positive competitive effects to be modest. On the other hand, setting any eligibility threshold may create a competitive disadvantage for those registrants that miss eligibility because their public float is just above the specified threshold, relative to the newly eligible registrants. However, our economic analysis suggests that this potentially negative effect would be modest.

As discussed above, our empirical analysis suggests that scaled disclosures related to smaller reporting companies are unlikely to have a significantly negative effect on the overall information environment of smaller reporting companies. Thus, we do not expect that the proposed amendments would have a significant negative effect on the information efficiency of affected parties. Finally, it is difficult to quantify the effect of scaled disclosures on capital formation because the Commission's 2007 rules coincided with the 2008 financial crisis and its aftermath, which led to extremely thin capital market activities. However, given that both the potential cost savings and the potential negative consequences of scaled disclosure are modest, as shown in Tables 5 and 6, we do not expect the proposed amendments to have a significant impact on capital formation for the newly eligible registrants.

C. Possible Alternatives

In this section, we present several alternatives to the proposed amendments and discuss their relative costs and benefits.

As a first alternative, we could use a different registrant size metric in the smaller reporting company definition. While public float has the advantage of capturing the value held by non-affiliated investors who may be more affected by informational asymmetries, the disadvantage of public float is twofold. First, reported public float numbers are not easily verifiable. Second, using public float to define eligibility may increase adverse selection due to conflicts of interest between affiliated and non-affiliated owners. We considered equity market value as an alternative size metric to public float. Equity market value is more accessible and more easily verifiable than public float. It does not differentiate registrants based on the degree of informational asymmetry concerns, but it also does not favor registrants with more affiliated ownership. If we define registrants as smaller reporting companies when they have less than $250 million in equity market value or zero equity market value but revenue below $100 million, 3,604 or 47.7% of the registrants that filed Forms 10–K in 2015 would qualify as smaller reporting companies (3,084 based on equity market value and 520 based on revenue).[97]

As a second alternative, we could revise the smaller reporting company definition to capture registrants that meet *either* a public float threshold *or* a revenue threshold. For example, one commenter suggested defining a smaller reporting company as any registrant with either public float below $250 million or revenue below $100 million.[98] This alternative would lead to 1,266 additional eligible registrants relative to the current definition, and 201 relative to the proposed amendments. Among the 201 additional registrants, 41.5% are in "Pharmaceutical Products" and 18% are in "Financial Trading." Expanding the pool of eligible registrants would lead to increased cost savings for registrants while also increasing the potential for informational asymmetries and other costs associated with scaled disclosures. In addition, relative to the current smaller reporting companies or those newly eligible under the proposed amendments, the 201 additional qualifying registrants may have different characteristics that could affect the appropriateness of scaled disclosure. For example, the 201 additional registrants are substantially larger than those eligible under the current definition or the proposed amendments. The average public float of the 201 additional registrants is $769 million, while it is $17 million under the current definition and $50 million under the proposed amendments. The size of these registrants implies that any cost savings from scaled disclosures would generate a much smaller impact on their firm value and may not justify the potential loss of informational transparency.

While neither public float nor revenue data show a natural breakpoint, as a third alternative to the proposed amendments, we could have revised the smaller reporting company definition using different thresholds. For example, we could take inflation since 2007 into account, raising the public float threshold from $75 million to $85.7 million and the revenue threshold from $50 million to $57.2 million. The inflation adjustment of the current thresholds would expand the pool of eligible smaller reporting companies by 88 registrants, 82 of which reported public float between $75 million and $85.7 million in their 2015 Form 10–Ks and six of which had zero public float and revenue between $50 million and $57.2 million.[99] Alternatively, instead of $250 million public float, we could use $700 million public float, which is the threshold in the "large accelerated filer" definition. For registrants with zero public float, we could use $1 billion in revenue instead of $100 million in revenue, which is the threshold in the EGC definition. A $1 billion revenue threshold would make scaled disclosure accommodations for smaller reporting companies and EGCs uniform for the subset of smaller registrants that have zero public float. Using 2015 data, we estimate that if we were to use these alternative thresholds in combination, there would be 899 newly eligible registrants for smaller reporting company status (746 newly eligible registrants based on public float and 153 newly eligible registrants based on revenues), in addition to the 782 newly eligible registrants under the proposed amendments. Expanding the pool of registrants eligible for smaller reporting company status using the latter two alternative thresholds would further reduce overall compliance costs for registrants but also potentially increase the informational asymmetries and other adverse effects associated with scaled disclosures. Relative to the current smaller reporting companies or the newly eligible smaller reporting companies under the proposed amendments, these additional qualifying registrants also may have different characteristics that could affect the appropriateness of scaled disclosure. For example, the 899 additional registrants under this alternative are much larger, implying that any cost savings from scaled disclosures would generate a much smaller impact on the registrants' firm value, and may not justify the potential loss of informational transparency.

As a fourth alternative, we could consider expanding the number of registrants eligible for the Sarbanes-Oxley Act Section 404(b) exemption. The newly eligible smaller reporting companies under the proposed amendments would remain subject to Section 404(b). This would create two tiers among smaller reporting companies: registrants with public floats below $75 million would be eligible for the scaled disclosures and exempt from Section 404(b) and registrants with public floats between $75 million and $250 million would be eligible only for the scaled disclosures. Thus, one alternative would be to extend the Section 404(b) exemption to all registrants that are eligible for and claim smaller reporting company status.

The advantage of this alternative would be twofold. First, it would provide a uniform exemption from the auditor attestation about the effectiveness of internal controls over financial reporting for all smaller reporting companies, which could potentially simplify the regulatory framework. Second, it could lead to greater cost savings for the newly eligible registrants. Although there is debate on whether the direct cost of Section 404(b) is substantial for the majority of registrants, there are academic studies suggesting that the cost was non-trivial for smaller registrants when Section 404(b) was first implemented in 2004,[100] and that expenses related to Section 404(b) compliance have decreased over time as companies and their auditors gained more experience with the requirements and as a result of steps taken by both the Commission and the Public Company Accounting Oversight Board.[101] There also may be indirect costs associated with Section 404(b), such as, among other things, increasing smaller registrants' propensity to go private or decreasing their propensity to go public or altering their incentives to grow by undertaking less investment.[102]

---

[97] This alternative would lead to a slightly smaller pool of registrants eligible for smaller reporting company status than under the proposed amendments.

[98] *See* BIO Letter.

[99] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

[100] *See, e.g.*, Peter Iliev, *Effect of SOX Section 404: Costs, Earnings Quality, and Stock Prices,* 45 J. Fin. 1163–1196 (2010).

[101] *See, e.g.*, Cindy R. Alexander et al., *Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,"* 56 J. Account. & Econ. 267–290; John Coates and Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* Accounting Horizons, forthcoming (2014). *But see* note 66 (indicating that one stakeholder representative has raised concerns about whether, in response to PCAOB inspection results, some auditors more recently have started to take approaches to evaluate internal control over financial reporting that are inconsistent with attaining goals of reduced compliance costs).

[102] *See* Gao, Feng, Joanna Wu, and Jerold Zimmerman, *Unintended Consequences of Granting Small Firms Exemptions From Securities Regulation: Evidence From The Sarbanes-Oxley Act,* Journal of Accounting Research, Vol. 49, No. 2, 459–506 (2009) (providing evidence that the exemption from Section 404 for non-accelerated filers has created an incentive for some of these firms to remain below the bright-line threshold of $75 million of public float).

Extending the exemption also could lead to a reduction of these indirect costs, although this reduction is difficult to quantify.

Under this alternative, however, investors of the affected registrants would lose the benefits of Section 404(b). Existing surveys of corporate leaders as well as academic studies suggest that Sarbanes-Oxley Act Section 404(b) has led to improvements in the quality of registrants' information environment and financial reporting, registrants' ability to prevent and detect fraud, and investor confidence in U.S. registrants.[103] Moreover, an academic study found that non-accelerated filers not subject to the Section 404(b) auditor attestation requirements suffered from a deterioration in the quality of their financial reporting vis-à-vis accelerated filers.[104] Another recent working paper suggests that registrants that voluntarily comply with the Section 404(b) auditor attestation have lower cost of capital.[105]

D. Request for Comment

We request comment on all aspects of this economic analysis, including the costs and benefits of the proposals and alternatives thereto, as well as their potential effects on efficiency, competition, and capital formation. With respect to comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate. We also request qualitative feedback on the nature of the benefits and costs we have identified and any other benefits and costs that we should consider.

To assist in our consideration of these costs and benefits, we specifically request comment on the following:

19. Are there quantifiable aspects of savings related to scaled disclosures other than those captured by audit fees? Please provide detailed descriptions of these aspects of savings and quantitative data or support, if applicable.

20. Some registrants eligible for scaled disclosure choose not to avail themselves of the scaling permitted by our rules. Why do such registrants choose not to claim the smaller reporting company status and not to use the scaled disclosure accommodations? Are there quantifiable benefits to such potentially eligible registrants of opting out of scaled disclosure?

21. Are there filers that are not required to file with the Commission that choose to voluntarily provide non-scaled disclosure even though the filer would qualify under the smaller reporting company thresholds? Why do such filers choose to opt out of scaled disclosure? Are there quantifiable benefits to such filers of opting out of scaled disclosure?

22. Are there indirect costs or cost savings related to scaled disclosures for smaller reporting companies that we have not considered and could be quantified?

23. To arrive at an estimate for the total cost savings associated with scaled disclosures, we assume that the total cost savings (including employee and managerial time and resources) are four times the cost savings on audit fees. Is there a different assumption we should use and why? Please provide data to support the suggestion if available.

24. Are there ways to further assess the degree of adverse selection associated with the proposed amendments? Are there other proxies for information environment, liquidity and growth that would better capture the potential economic impact of scaled disclosure? Are there data or empirical studies about incidence of fraud in relation to registrants' size?

25. Are there other ways to quantify the effect of scaled disclosures on smaller reporting companies' capital formation?

26. Are there any metrics alternative to public float and annual revenue to be considered in the definition of smaller reporting companies? What are the advantages and disadvantages associated with these alternative metrics?

IV. Paperwork Reduction Act

A. Background

The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[106] We are submitting a request for approval of the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA and its implementing regulations.[107] The titles of the collections of information are:[108]

(1) "Regulation S–K" (OMB Control No. 3235–0071);

(2) "Regulation C" (OMB Control No. 3235–0074);

(3) "Regulation 12B" (OMB Control No. 3235–0062);

(4) "Form 10–K" (OMB Control No. 3235–0063);

(5) "Form 10–Q" (OMB Control No. 3235–0070);

(6) "Schedule 14A" (OMB Control No. 3235–0059);

(7) "Schedule 14C" (OMB Control No. 3235–0057);

(8) "Form 10" (OMB Control No. 3235–0064);

(9) "Form S–1" (OMB Control No. 3235–0065);

(10) "Form S–3" (OMB Control No. 3235–0073);

(11) "Form S–4" (OMB Control No. 3235–0324); and

(12) "Form S–11" (OMB Control No. 3235–0067).

We adopted the existing rules, regulations, and forms pursuant to the Securities Act and the Exchange Act. These rules, regulations, and forms set forth the disclosure requirements for annual and quarterly reports, proxy and information statements, and registration statements that are prepared by registrants to provide investors information to make informed investment and voting decisions. Our proposed amendments are intended to make scaled disclosure accommodations available to a larger number of registrants. The proposed amendments should decrease the disclosure requirements for some registrants. The proposed amendments do not affect any disclosure requirements for any registrant with a calculable public float of $250 million or more.

---

[103] *See* John Coates and Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* Accounting Horizons, forthcoming (2014). *See also,* United States Government Accountability Office, Report to Congressional Committees, Internal Controls (July 2013) available at *http://www.gao.gov/assets/660/655710.pdf* (noting that compliance with Section 404(b) has a positive impact on investor confidence in the quality of financial reports and recommending that the Commission consider requiring companies to explicitly state whether they have obtained an auditor attestation of their internal controls, which may increase transparency and investor protection).

[104] *See* Anthony D. Holder, Khnondkar E. Karim, and Ashok Robin, *Was Dodd-Frank Justified in Exempting Small Firms from Section 404b Compliance?,* Accounting Horizons, Vol. 27, No. 1 (2013). Similarly, a 2012 study found that smaller accelerated filers subject to the Section 404(b) auditor attestation requirements benefit from higher revenue quality as compared to non-accelerated filers, which are not subject to the requirements. *See* Gopal V. Krishnan and Wei Yu, *Do Small Firms Benefit from Auditor Attestation of Internal Control Effectiveness,* Auditing: A Journal of Practice & Theory, Vol. 34, No. 1 (Nov. 2012).

[105] *See* Cory A. Cassell, Linda A. Myers, and Jian Zhou, *The Effect of Voluntary Internal Control Audits on the Cost of Capital* (June 1, 2013), available at SSRN: *http://ssrn.com/abstract=1734300,* finding that voluntary compliance with Section 404(b) is associated with significant reductions in both the cost of equity and the cost of debt in the first year of voluntary compliance. However, we note that the registrants that voluntarily comply with Section 404(b) may be fundamentally different from other non-accelerated filers. Thus, the economic effects of voluntary compliance with Section 404(b) may not necessarily apply to other firms.

[106] 44 U.S.C. 3501 *et seq.*

[107] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[108] The paperwork burden from Regulation S–K, Regulation C and Regulation 12B is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of Regulation S–K, Regulation C and Regulation 12B.

The hours and costs associated with preparing disclosure, filing information required by forms, and retaining records constitute reporting and cost burdens imposed by collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. Compliance with the information collections listed above is mandatory to the extent applicable to each registrant.[109] Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of Information Collections

The proposed amendments, which would amend the definition of smaller reporting company to capture a greater number of registrants, may decrease existing collection of information total burden estimates, or not affect them at all, for some reports on Form 10–K and Form 10–Q, some proxy statements on Schedule 14A, some information statements on Schedule 14C, and some registration statements on Form 10, Form S–1, Form S–3, Form S–4, and Form S–11, filed by registrants that meet the definition of smaller reporting company as we propose to revise it.

The proposed amendments would not change the amount of information required to be included in Exchange Act reports by any registrant because of its status as an accelerated filer or a large accelerated filer.

C. Burden and Cost Estimates

For purposes of the PRA, we believe that if the proposed amendments were adopted the total decrease in burden hours for Form 10–K, Form 10–Q, Schedule 14A, Schedule 14C, Form 10, Form S–1, Form S–3, Form S–4, and Form S–11 would be approximately 220,357 burden hours and the total decrease in external costs would be approximately $35,691,649.

Our burden hour and cost estimates presented below represent the average burdens for all registrants, both large and small. In deriving our estimates, we recognize that the burdens likely would vary among individual registrants based on a number of factors, including the size and complexity of their business. We believe that some registrants would experience costs in excess of this average and some registrants would experience less than the average costs. In addition, for quarterly and annual reports and for proxy and information statements, we estimate that 75% of the burden of preparation is carried by the registrant internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[110] For registration statements, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.

For purposes of the PRA, we estimate that over a three-year period,[111] the annual aggregate decreased burden[112] resulting from the proposed amendments would average:

- 142,068 hours and $18,943,168 of external costs for Form 10–K;
- 71,938 hours and $9,594,202 of external costs for Form 10–Q;
- 432 hours and $57,600 of external costs for Schedule 14A;
- 7 hours and $880 of external costs for Schedule 14C;
- 9 hours and $11,100 of external costs for Form 10;
- 3,477 hours and $4,172,314 of external costs for Form S–1;
- 37 hours and $43,920 of external costs for Form S–3;
- 2,140 hours and $2,567,578 of external costs for Form S–4; and
- 251 hours and $300,888 of external costs for Form S–11.

These estimates were based on the following assumptions:

1. Form 10–K

We estimate that approximately 782 registrants would become newly eligible to use scaled disclosure for smaller reporting companies or have a new opportunity to assess whether to avail themselves of scaled disclosure for their annual reports and could experience burden and cost savings if these proposed amendments are adopted.[113] We estimate that if these registrants use all of the scaled disclosure requirements,[114] they would save 177,584 burden hours and an aggregate cost of $23,678,960.[115]

While we are unsure of the extent to which these newly eligible smaller reporting companies would realize the full savings from the scaled disclosure requirements, for purposes of this analysis, we estimate that eligible registrants would realize approximately 80% of these savings.[116] As a result, we

---

[109] As noted above, registrants claiming smaller reporting company status have the option to selectively comply with the scaled disclosures available to them on an item-by-item basis.

[110] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting.

[111] We calculated an annual average over a three-year period because OMB approval of PRA submissions covers a three-year period.

[112] Our decreased burden estimates take into account, and are net of, any increased burden that may result from smaller reporting companies providing expanded disclosures under disclosure requirements that are more stringent for smaller reporting companies than for non-smaller reporting companies, such as Item 404 of Regulation S–K.

[113] We estimate that 782 additional registrants would be eligible under the proposed amendments to use the scaled disclosure requirements available to smaller reporting companies for their annual and quarterly reports in the first year. We base this estimate on the number of additional registrants that would have been eligible to use scaled disclosure for their annual and quarterly reports in 2015, based on data collected by DERA from annual reports on Form 10–K filed in 2015. This data shows that 751 registrants had a public float greater than $75 million but less than $250 million, and 31 registrants with a public float of zero had annual revenues greater than $50 million but less than $100 million.

[114] A smaller reporting company generally may choose to comply with some, all, or none of the scaled disclosure requirements available for smaller reporting companies under our rules.

[115] Consistent with our analysis in the Smaller Reporting Company Adopting Release, we estimate the compliance burden for a Form 10–K for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–KSB, which was 1,272 burden hours and a cost of $169,600 (424 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10–K by up to 177,584.38 hours (1,499.09 internal hours per filing using standard Regulation S–K disclosure minus 1,272 internal hours per filing using scaled disclosure = 227.09 internal hours saved per filing × 782 filings) and decrease the cost by up to $23,678,960 (499.70 professional hours per filing using standard Regulation S–K disclosure minus 424 professional hours per filing using scaled disclosure = 75.70 external hours saved per filing × $400 per hour = $30,280 external cost savings per filing × 782 filings).

[116] This estimated realization rate reflects the percentage of registrants eligible to claim smaller reporting company status in 2015 that claimed such status. Based on data collected by DERA, 2,900, or approximately 91.1%, of the estimated 3,183 eligible registrants claimed smaller reporting company status. Specifically, 2,241, or approximately 93.1%, of the estimated 2,408 registrants that would qualify under the public float threshold and 659, or approximately 85.0%, of the estimated 775 registrants that would qualify under the annual revenue threshold, claimed smaller reporting company status.

In addition, this estimated realization rate is further reduced to reflect that a portion of newly eligible smaller reporting companies may already qualify as EGCs, which are eligible to rely on certain scaled disclosure requirements for a limited period, including some of the scaled requirements available to smaller reporting companies. Based on data collected by DERA, 153, or approximately 19.6%, of the 782 newly eligible registrants were EGCs and therefore eligible to rely on some scaled estimate that the aggregate decrease in burden for Form 10–K would be 142,068 internal burden hours and costs of $18,943,168.[117]

2. Form 10–Q

We assume that the same approximately 782 registrants would become newly eligible to use scaled disclosure for purposes of their quarterly reports. We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 89,922 burden hours and an aggregate cost of $11,992,752.[118]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form 10–Q would be 71,938 internal burden hours and costs of $9,594,202.[119]

3. Schedule 14A

We estimate that registrants newly eligible to use scaled disclosure would file approximately 720 definitive proxy statements on Schedule 14A.[120] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 540 burden hours and an aggregate cost of $72,000.[121]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Schedule 14A would be 432 internal burden hours and costs of $57,600.[122]

4. Schedule 14C

We estimate that registrants newly eligible to use scaled disclosure would file approximately 11 definitive information statements on Schedule 14C.[123] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save eight burden hours and an aggregate cost of $1,100.[124]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Schedule 14C would be seven internal burden hours and costs of $880.[125]

5. Form 10

We estimate that registrants newly eligible to use scaled disclosure would file one registration statement on Form 10.[126] We estimate that if this registrant uses all of the scaled smaller reporting company requirements, it would save nine burden hours and an aggregate cost of $11,100.[127] Due to the low number of Form 10 filers, the reduced number of scaled disclosure accommodations available to EGCs for purposes of Form 10, and rounding considerations, we assume that any newly eligible registrant would realize the full extent of these savings.

6. Form S–1

We estimate that registrants newly eligible to use scaled disclosure would file approximately 52 registration statements on Form S–1.[128] We estimate that if these registrants use all of the scaled smaller reporting company

---

disclosure accommodations and already benefitting from a portion of these estimated savings.

[117] This estimated decrease in the compliance burden for Form 10–K is based on 80% × 177,584.38 internal hours saved = 142,067.50 internal hours saved and 80% × $23,678,960 external cost savings = $18,943,168 external cost savings.

[118] Similar to our approach to estimating the reduced compliance burden for a Form 10–K using scaled disclosure, we base our estimates of the reduced compliance burden for smaller reporting companies using all scaled disclosure available for certain other filings on the last available PRA inventory for completing the most comparable form under Regulation SB. We estimate the compliance burden for a Form 10–Q for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–QSB, which was 102.24 burden hours and a cost of $13,362 (34.08 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10–Q by up to 89,922.18 hours (140.57 internal hours per filing using standard Regulation S–K disclosure minus 102.24 internal hours per filing using scaled disclosure = 38.33 internal hours saved per filing × 782 registrants × 3 filings per year) and decrease the cost by up to $11,992,752 (46.86 professional hours per filing using standard Regulation S–K disclosure minus 34.08 professional hours per filing using scaled disclosure = 12.78 external hours saved per filing × $400 per hour = $5,112 external cost savings per filing × 782 registrants × 3 filings per year).

[119] This estimated decrease in the compliance burden for Form 10–Q is based on 80% × 89,922.18 internal hours saved = 71,937.74 internal hours saved and 80% × $11,992,752.00 external cost savings = $9,594,201.60 external cost savings.

[120] We base this estimate on the number of definitive proxy statements on Schedule 14A filed in 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, registrants with a public float greater than $75 million but less than $250 million filed 697 definitive proxy statements on Schedule 14A, and registrants with a public float of zero and annual revenues greater than $50 million but less than $100 million filed 23 definitive proxy statements on Schedule 14A.

[121] We base our estimate of the reduced compliance burden for Schedule 14A for a smaller reporting company using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5), (e)(4) and (e)(5) of Regulation S–K, with which smaller reporting companies are not required to comply. We estimate this burden to be 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Schedule 14A by up to 540 hours (0.75 internal hours saved per filing × 720 filings) and decrease the cost by up to $72,000 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 720 filings).

[122] This estimated decrease in the compliance burden for Schedule 14A is based on 80% × 540 internal hours saved = 432 internal hours saved and 80% × $72,000.00 external cost savings = $57,600.00 external cost savings.

[123] We base this estimate on the number of definitive information statements on Schedule 14C filed in 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, registrants with a public float greater than $75 million but less than $250 million filed 11 definitive information statements on Schedule 14C, and registrants with a public float of zero and annual revenues greater than $50 million but less than $100 million filed no definitive information statements on Schedule 14C.

[124] Similar to Schedule 14A, we base our estimate of the decrease in the compliance burden for Schedule 14C for a smaller reporting company using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5), (e)(4) and (e)(5) of Regulation S–K, which is 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Schedule 14C by up to 8.25 hours (0.75 internal hours saved per filing × 11 filings) and decrease the cost by up to $1,100 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 11 filings).

[125] This estimated decrease in the compliance burden for Schedule 14C is based on 80% × 8.25 internal hours saved = 6.6 internal hours saved and 80% × $1,100.00 external cost savings = $880.00 external cost savings.

[126] We base our estimated number of each type of registration statement filed on the average number of that type of registration statement filed in each of the calendar years 2013 through 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed one registration statement on Form 10 during the period 2013 through 2015, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of one registration statement on Form 10 each year.

[127] We estimate the compliance burden for a Form 10 for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–SB, which was 44.50 burden hours and a cost of $53,400 (133.50 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10 by up to 9.25 hours (53.75 internal hours per filing using standard Regulation S–K disclosure minus 44.50 internal hours per filing using scaled disclosure = 9.25 internal hours saved per filing × 1 filing) and decrease the cost by up to $11,100 (161.25 professional hours per filing using standard Regulation S–K disclosure minus 133.50 professional hours per filing using scaled disclosure = 27.75 external hours saved per filing × $400 per hour = $11,100 external cost savings per filing × 1 filing).

[128] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 26 registration statements on Form S–1 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately 26 registration statements on Form S–1 each year.

requirements, they would save 4,346 burden hours and an aggregate cost of $5,215,392.[129]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–1 would be 3,477 internal burden hours and costs of $4,172,314.[130]

7. Form S–3

We estimate that registrants newly eligible to use scaled disclosure would file approximately 183 registration statements on Form S–3.[131] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 46 burden hours and an aggregate cost of $54,900.[132]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–3 would be 37 internal burden hours and costs of $43,920.[133]

8. Form S–4

We estimate that registrants newly eligible to use scaled disclosure would file approximately 32 registration statements on Form S–4.[134] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 2,675 burden hours and an aggregate cost of $3,209,472.[135]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–4 would be 2,140 internal burden hours and costs of $2,567,578.[136]

9. Form S–11

We estimate that registrants newly eligible to use scaled disclosure would file approximately three registration statements on Form S–11.[137] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 251 burden hours and an aggregate cost of $300,888.[138] Due to the low number of Form S–11 filers and rounding considerations, we assume that the newly eligible registrants would realize the full extent of these savings.

D. Request for Comment

We request comment to:

- Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility;
- evaluate the accuracy of our estimate of the burden of collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- evaluate whether the proposed amendments would have any effects on any other collections of information not previously identified in this section.[139]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–XX–XX. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–XX–XX, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

---

[129] We estimate the compliance burden for a Form S–1 for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form SB–2, which was 159.50 burden hours and a cost of $191,400 (478.50 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–1 by up to 4,346.16 hours (243.08 internal hours per filing using standard Regulation S–K disclosure minus 159.50 internal hours per filing using scaled disclosure = 83.58 internal hours saved per filing × 52 filings) and decrease the cost by up to $5,215,392 (729.24 professional hours per filing using standard Regulation S–K disclosure minus 478.50 professional hours per filing using scaled disclosure = 250.74 external hours saved per filing × $400 per hour = $100,296 external cost savings per filing × 52 filings).

[130] This estimated decrease in the compliance burden for Form S–1 is based on 80% × 4,346.16 internal hours saved = 3,476.93 internal hours saved and 80% × $5,215,392.00 external cost savings = $4,172,313.60 external cost savings.

[131] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 181 registration statements on Form S–3 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately two registration statements on Form S–3.

[132] We base our estimate of the reduced compliance burden for Form S–3 for a smaller reporting company using all scaled disclosure available on our estimate of the average compliance burden for Items 503(d) and 504 of Regulation S–K, which requirements are scaled for smaller reporting companies. We estimate the decrease in compliance burden for a registration statement on Form S–3 for a smaller reporting company using all scaled disclosure available to be 0.25 burden hours and a cost of $300 (0.75 professional hours × $400/hour) per filing.

Accordingly, we estimate that it would decrease the compliance burden of Form S–3 by up to 45.75 hours (0.25 internal hours saved per filing × 183 filings) and decrease the cost by up to $54,900 ($300 external cost savings per filing × 183 filings).

[133] This estimated decrease in the compliance burden for Form S–3 is based on 80% × 45.75 internal hours saved = 36.60 internal hours saved and 80% × $54,900.00 external cost savings = $43,920.00 external cost savings.

[134] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 29 registration statements on Form S–4 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately three registration statements on Form S–4.

[135] We estimate the reduction in the compliance burden for Form S–4 for a smaller reporting company using all scaled disclosure available to be the same as the reduction in the compliance burden for a Form S–1 for a smaller reporting company using all scaled disclosure available as compared to standard Regulation S–K disclosure, which was 83.58 burden hours and a cost of $100,296 (250.74 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–4 by up to 2,674.56 hours (83.58 internal hours saved per filing × 32 filings) and decrease the annual cost by up to $3,209,472 ($100,296 external cost savings per filing × 32 filings).

[136] This estimated decrease in the compliance burden for Form S–4 is based on 80% × 2,674.56 internal hours saved = 2,139.65 internal hours saved and 80% × $3,209,472.00 external cost savings = $2,567,577.60 external cost savings.

[137] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately two registration statements on Form S–11 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately one registration statement on Form S–11.

[138] We estimate the reduction in the compliance burden for Form S–11 for a smaller reporting company using all scaled disclosure available to be the same as reduction in the compliance burden for Form S–1 for a smaller reporting company using all scaled disclosure available as compared to standard Regulation S–K disclosure, which was 83.58 burden hours and a cost of $100,296 (250.74 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–11 by up to 250.74 hours (83.58 internal hours saved per filing × 3 filings) and decrease the annual cost by up to $300,888.00 ($100,296 external cost savings per filing × 3 filings).

[139] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA)[140] requires us, in promulgating rules under Section 553 of the Administrative Procedure Act,[141] to consider the impact of those rules on small entities. We have prepared this Initial Regulatory Flexibility Analysis (IRFA) in accordance with Section 603 of the RFA.[142] This IRFA relates to the proposed amendments to the smaller reporting company definition as used in our rules.

A. Reasons for, and Objectives of, the Action

Small businesses, the ACSEC, the Small Business Forum, Congress and others have raised concerns about the burden of our disclosure rules on smaller registrants. The primary reason for, and objective of, the proposed amendments to the smaller reporting company definition is to reduce the disclosure burdens on smaller registrants by expanding the number of registrants that qualify as smaller reporting companies. The primary reason for, and objective of, the proposed amendments to the accelerated filer and large accelerated filer definitions is to maintain the status quo regarding the category of registrants that are subject to accelerated and large accelerated filer disclosure and filing requirements.

The ACSEC and the Small Business Forum have recommended that we revise the smaller reporting company definition to include registrants with a public float of up to $250 million. The proposed amendments are responsive to those recommendations.

The FAST Act requires us to revise Regulation S–K to further scale or eliminate disclosure requirements to reduce the burden on a variety of smaller registrants, including smaller reporting companies, while still providing all material information to investors. A number of existing Regulation S–K disclosure requirements provide smaller reporting companies with the opportunity to provide scaled disclosures in their Commission filings. Raising the financial thresholds in the smaller reporting company definition would be responsive to the FAST Act because it would reduce the burden on smaller registrants by increasing the number of registrants eligible to provide scaled disclosures.

B. Legal Basis

We are proposing the amendments pursuant to Sections 7, 10 and 19 of the Securities Act, Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act and Section 72002 of the FAST Act.

C. Small Entities Subject to the Proposed Amendments

For purposes of the RFA, under Securities Act Rule 157[143] an issuer, other than an investment company, is a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under Exchange Act Rule 0–10(a),[144] an issuer, other than an investment company, is a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. For purposes of the RFA, under our rules an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[145]

The proposed amendments would increase the financial thresholds in the smaller reporting company definition. We estimate that there are currently 837 entities that qualify as "small" under the definitions set forth above.[146] We believe it is likely that virtually all small businesses or small organizations, as defined in our rules described above, are already encompassed within the current smaller reporting company definition and would continue to be encompassed within the definition if the proposed amendments were adopted. To the extent any small business or small organization, as defined for RFA purposes, is not already encompassed within the current smaller reporting company definition, we believe it is likely that the proposed amendments would capture those entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to the smaller reporting company definition would increase the number of registrants eligible to provide scaled disclosures in response to Regulation S–K and Regulation S–X disclosure requirements. The proposed amendments do not revise the scaled disclosure requirements themselves.

If the proposed amendments were adopted, registrants with public floats in excess of $75 million and less than $250 million would become eligible to provide scaled disclosures. Registrants with zero public float and revenues in excess of $50 million and less than $100 million in the most recent fiscal year also would become eligible to provide scaled disclosures. Registrants with less than $75 million of public float and registrants with zero public float and less than $50 million in annual revenues would not be impacted by the proposed amendments because they already are eligible to provide scaled disclosures.

The proposed amendments would not increase the overall disclosure requirements for small entities and could decrease substantially the disclosures required for registrants with public floats between $75 million and $250 million and registrants with zero public float and annual revenues between $50 million and $100 million.

Item 404 is the only disclosure item in Regulation S–K that may require more extensive information for smaller reporting companies than for non-smaller reporting companies. Item 404(d)(1) requires disclosure of transactions with related persons that exceed the lesser of $120,000 or 1% of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years. This requirement may be more burdensome to a smaller reporting company if 1% of its average total assets is less than $120,000, which is the disclosure threshold for non-smaller reporting companies. This disclosure requirement would affect only smaller reporting companies with related person transactions. Item 404 also requires disclosure, only by smaller reporting companies, about parents and underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter. In addition, for filings other than registration statements, Item 404 requires smaller reporting companies to provide information covering an additional year.

---

[140] 5 U.S.C. 601 *et seq.*

[141] 5 U.S.C. 553.

[142] 5 U.S.C. 603.

[143] 17 CFR 230.157.

[144] 17 CFR 240.0–10(a).

[145] 17 CFR 270.0–10(a).

[146] Staff estimate based on review of Form 10–K filings with fiscal periods ending between January 31, 2015 and January 31, 2016.

E. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The RFA directs us to consider significant alternatives that would accomplish the stated objectives of our proposed amendments, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the proposed amendments;
- using performance rather than design standards; and
- exempting small entities from coverage of all or part of the proposed amendments.

The proposed amendments generally do not create any new compliance or reporting requirements. Instead, they would expand the number of companies eligible for the different compliance and reporting requirements available to smaller reporting companies.[147] As a result, we do not believe it is necessary or appropriate to exempt small entities in connection with this rulemaking. The proposed amendments are intended to increase the number of registrants eligible to provide scaled disclosures under Regulation S–K and Regulation S–X. We believe that some of the registrants that would become eligible to provide scaled disclosures if the proposed amendments are adopted may be smaller entities. Therefore, we believe that the proposed amendments may simplify compliance and reporting requirements for small entities. With respect to the use of performance rather than design standards, because the proposed amendments are not expected to have any significant adverse effect on small entities (and may, in fact, relieve burdens for some such entities), we do not believe it is necessary to use performance standards in connection with this rulemaking.

In Section III, above, we discuss additional alternatives that we have considered. We note that those alternatives, such as using a different threshold or different standard for determining smaller reporting company status, are unlikely to have a significant effect on smaller entities because, as noted above, we believe virtually all small entities are already eligible for smaller reporting company status. Similarly, with respect to the alternative of not amending the accelerated and large accelerated filer definitions, we believe there are very few small entities that would be considered accelerated filers under the current definitions, and, therefore, this alternative would not significantly affect small entities.

G. General Request for Comment

We encourage comments with respect to any aspect of this IRFA. In particular, we request comments on:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Commenters should describe the nature of any impact and provide empirical data supporting the extent of the impact. Any comments we receive will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[148] the Commission must advise the OMB as to whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Basis and Text of Proposed Rules

The rule amendments described in this release are being proposed pursuant to Sections 7, 10 and 19 of the Securities Act (15 U.S.C. 77a *et seq.*), as amended, Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78a *et seq.*), as amended, and Section 72002 of the FAST Act.

List of Subjects in 17 CFR Parts 210, 229, 230, 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l*, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*, and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

■ 2. Amend § 229.10 by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(f) * * *

(1) *Definition of smaller reporting company.* As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

---

[147] As discussed in Section V.D, Item 404 is the only disclosure item in Regulation S–K that may require more extensive information for smaller reporting companies than for non-smaller reporting companies.

[148] 5 U.S.C. 801 *et seq.*

(ii) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(2) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1)(i) of this Item, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 230.405 by revising the definition of "smaller reporting company" to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) or § 229.10(f)(1)(iii) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 6. Amend § 240.12b–2 by:
■ a. Amending the definition of "accelerated filer and large accelerated filer" as follows:
■ i. Adding the word "and" at the end of paragraph (1)(ii);
■ ii. Removing "; and" at the end of paragraph (1)(iii) and in its place adding a period;
■ iii. Removing paragraph (1)(iv);
■ iv. Adding the word "and" at the end of paragraph (2)(ii);
■ v. Removing "; and" at the end of paragraph (2)(iii) and in its place adding a period; and
■ vi. Removing paragraph (2)(iv); and
■ b. Revising the definition of "smaller reporting company."

The revision to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) or § 229.10(f)(1)(iii) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

By the Commission.

Dated: June 27, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15674 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 1005, and 1271

[Docket No. FDA–2016–N–1487]

Submission of Food and Drug Administration Import Data in the Automated Commercial Environment

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to establish requirements for the electronic filing of entries of FDA-regulated products in the Automated Commercial Environment (ACE) or any other electronic data interchange (EDI) system authorized by the U.S. Customs and Border Protection Agency (CBP), in order for the filing to be processed by CBP and to help FDA in determining admissibility of that product. ACE is a commercial trade processing system operated by CBP that is designed to implement the International Trade Data System (ITDS), automate import and export processing, enhance border security, foster U.S. economic security through lawful international trade and policy, and to replace the Automated Commercial System (ACS). FDA is a Partner Government Agency (PGA) in the initiative to establish ITDS, the "single window" for the submission of import and export data to the United States Government. The proposed rule would also update certain sections of FDA regulations related to imports. This rule, as proposed, does not affect the ability of filers to continue to submit their import entries and entry summaries by paper for FDA-regulated products that are being imported or offered for import. Once finalized, this action will facilitate effective and efficient admissibility review by the Agency and protect public health by allowing FDA to focus its limited resources on those FDA-regulated products being imported or offered for import that may be associated with a greater public health risk.

DATES: Submit either electronic or written comments on the proposed rule by August 30, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions.")

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–1487 for "Submission of FDA Import Data into the Automated Commercial Environment." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, "Submission of FDA Import Data into the Automated Commercial Environment."

FOR FURTHER INFORMATION CONTACT: Ann M. Metayer, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993–0002, 301–796–3324, *Ann.Metayer@fda.hhs.gov.*

With regard to the information collection: Jonnalynn Capezzuto, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., Rm. 14526, Silver Spring, MD 20993–0002, *Jonnalynn.Capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
  A. Purpose of the Proposed Rule

- B. Summary of the Major Provisions of the Proposed Rule
- C. Legal Authority
- D. Costs and Benefits

II. Table of Abbreviations/Commonly Used Acronyms in This Document
III. Background
IV. Legal Authority
V. Description of the Proposed Rule
- A. Scope/Applicability
- B. Definitions
- C. Data Elements that Must Be Submitted in ACE for FDA-Regulated Products
- D. Technical Amendments

VI. Proposed Effective Date
VII. Economic Analysis of Impacts
- A. Introduction
- B. Summary of Benefits and Costs of the Proposed Rule

VIII. Analysis of Environmental Impact
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. References

I. Executive Summary

A. Purpose of the Proposed Rule

The proposed rule would require that certain data elements material to our admissibility determination on FDA-regulated products being imported or offered for import, be submitted in ACE or any other CBP-authorized EDI system, at the time of entry. This action, once finalized, will facilitate automated "May Proceed" determinations by us for low-risk FDA-regulated products which, in turn, will allow the Agency to focus our limited resources on products that may be associated with a greater public health risk.

FDA also proposes to make technical revisions to certain sections of FDA regulations to make updates and provide clarifications.

B. Summary of the Major Provisions of the Proposed Rule

This proposed rule would add Subpart D to Part 1 of 21 CFR Chapter I to require that certain data elements be submitted in ACE or any other CBP-authorized EDI system, at the time of entry in order to facilitate admissibility review by the Agency of FDA-regulated products being imported or offered for import into the United States. Submission of these data elements in ACE will help us to more effectively and efficiently make admissibility determinations for FDA-regulated products by increasing the opportunity for automated review by FDA's Operational and Administrative System for Import Support (OASIS).

The proposed rule would also make technical revisions to certain sections of 21 CFR Chapter I to update them. We propose to revise 21 CFR 1.83 and 21 CFR 1005.2 to update the definition of owner or consignee in order to make that definition consistent with Title 19 of the U.S. Code. We also propose to revise 21 CFR 1.90 to allow FDA to provide notice of sampling directly to an owner or consignee. Additionally, we propose to revise 21 CFR 1.94 to clarify that written notice can be provided electronically by FDA to owners or consignees of FDA actions to detain, refuse, and/or subject certain products to administrative destruction. Under § 1.94, owners or consignees will receive notice that FDA intends to take a certain action against an FDA-regulated product that is being imported or offered for import and the owner or consignee will have an opportunity to introduce testimony to the Agency in opposition to such action. We are also proposing to amend 21 CFR 1271.420 to make clear that, unless otherwise exempt, importers of record of human cells, tissues and cellular and tissue-based products (HCT/Ps) that are regulated solely under section 361 of the Public Health Service Act (42 U.S.C. 264) and 21 CFR part 1271 would be required to submit the applicable data elements included in the proposed rule in ACE.

C. Legal Authority

The legal authority for the proposed rule includes sections 536, 701, and 801 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360mm, 371, and 381, respectively), and sections 351, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 262, 264, and 271, respectively).

D. Costs and Benefits

The Agency has determined that this proposed rule may be a significant regulatory action as defined by Executive Order 12866. Although at this time we cannot fully quantify the benefits of this proposed rule, adopting the proposed rule is expected to provide a positive net benefit (estimated benefits minus estimated costs) to society.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/Acronym	What it means
ACE	Automated Commercial Environment or any other CBP-authorized EDI system.
ACE filer	The person who is authorized to submit an electronic import entry for an FDA-regulated product in ACE.
ACS	Automated Commercial System.
Agency	U.S. Food and Drug Administration.
CBP	U.S. Customs and Border Protection Agency.
CBER	FDA Center for Biologics Evaluation and Research.
CDER	FDA Center for Drug Evaluation and Research.
CDRH	FDA Center for Devices and Radiological Health.
CTP	FDA Center for Tobacco Products.
CVM	FDA Center for Veterinary Medicine.
EDI	Electronic Data Interchange.
FDA	U.S. Food and Drug Administration.
FDASIA	Food and Drug Administration Safety and Innovation Act.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
ITDS	International Trade Data System.
OASIS	FDA Operational and Administrative System for Import Support.
PGA	Partner Government Agency in ACE.
PHS Act	Public Health Service Act.
We, Our, Us	U.S. Food and Drug Administration.

III. Background

The number of FDA-regulated products imported into the United States has grown steadily, from approximately 6 million import lines in 2002 to over 35 million import lines in 2015. In 2014, FDA-regulated products imported or offered for import were manufactured in more than 322,500 foreign facilities and arrived in the United States from more than 100 countries. This increase in the importation of FDA-regulated products has posed challenges to FDA including enforcement of sections 536 and 801 of the FD&C Act and sections 351, 361, and 368 of the PHS Act.

Section 484 of the Tariff Act of 1930 as amended (19 U.S.C. 1484) established the requirement for importers of record to make entry for merchandise imported into the customs territory of the United States. When goods are imported into the United States they must be *entered* at one of the CBP ports. The term *entry* refers to the information or documentation that an importer of record must file with CBP. An *import line* is each portion of an import entry that is listed as a separate item on an entry document.

An importer of record is the owner or purchaser of the article being offered for import or a customs broker licensed by CBP under 19 U.S.C. 1641 who has been designated by the owner, purchaser, or consignee to file the import entry. There is one importer of record per entry. Approximately 98 percent of all entries containing FDA-regulated products subject to the proposed rule are filed by customs brokers.

In December 1993, the Customs Modernization Act (Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182)) was enacted. A prominent feature of the Customs Modernization Act is the legal requirement that importers of record exercise *reasonable care* when filing entries (19 U.S.C. 1484). Reasonable care requires that CBP be provided with the accurate and complete information or documentation deemed necessary by CBP to determine whether all legal requirements for admissibility of that article have been met.

The Customs Modernization Act also included the development of ACE, the planned successor to ACS which has been the electronic system used by CBP to track, control, and process all commercial goods imported into the United States for decades. ACE is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce while ensuring compliance with U.S. laws and regulations.

The ITDS, as described in section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347), was established to modernize and simplify the way in which PGAs, including FDA, interact with importers by creating a "single window" through which industry will transmit the data elements required for importation or exportation of cargo. The purpose of ITDS is to eliminate redundant filing requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all PGAs (19 U.S.C. 1411(d)(1)(B)). CBP has designed ACE to provide that "single window" for the filing of entries. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE (81 FR 10264, February 29, 2016). FDA has actively participated as a PGA in the development of ITDS and ACE.

On February 19, 2014, President Obama issued an Executive Order, *Streamlining the Export/Import Process for America's Businesses* (Executive Order 13659), requiring that, by December 31, 2016, PGAs have the capabilities, agreements, and other requirements in place to utilize the ITDS and supporting systems, such as ACE as the primary means of receipt of the data and other relevant information necessary for the release and clearance of imported goods. Executive Order 13659 envisions a simpler, more efficient automated system for trade use for the benefit of both the trade industry and PGAs. ACE is expected to become the sole EDI system authorized by CBP for processing electronic entry and entry summary filings; ACS incrementally is being decommissioned by CBP for those functions.

While primary responsibility for administering U.S. laws relating to imports is exercised by CBP, FDA is responsible for determining whether or not an FDA-regulated article being imported or offered for import is in compliance with the laws enforced by FDA. The discharge of this joint responsibility has involved close coordination and cooperation between FDA and CBP for such imports.

FDA receives notice from CBP of the arrival at each U.S. port of entry (sea, land, rail, and air) where FDA-regulated products are imported, of each shipment containing an FDA-regulated product. The PGA Message Set in ACE for FDA-regulated products contains the data that assists FDA in determining the admissibility of those products under FDA authorities. This data is transmitted to CBP by an ACE filer through the Automated Broker Interface (ABI), which permits a participant to file import data electronically in ACE. ABI is the primary mechanism for data submission in ACS, and will continue to be used in ACE. After the data is submitted through ABI in ACE, it is validated by CBP and made available to FDA. Transmission of data via ABI enables more effective enforcement and faster release decisions, as well as more certainty for the importer in determining logistics of cargo delivery (81 FR 10264). ABI is available to brokers, importers, and independent service bureaus, and currently over 96 percent of all entries filed with CBP in ACS are filed through ABI (Ref. 1).

If a required data element is not submitted in ACE, CBP cannot process the entry. The ACE filer will then receive an electronic message indicating that a particular data element was missing and that the entry will not be processed without submission of that data element. The ACE filer may refile the entry and it will be processed by CBP if all of the required elements are submitted.

Because, under ACE, CBP will relay the data in the PGA Message Set to FDA using an electronic interface with OASIS, the ACE filer will only need to submit this entry information once provided that the information submitted in ACE is accurate. ACE entries will be electronically screened in OASIS against criteria developed by FDA, as they were in ACS. FDA's Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT) is a risk-based electronic screening tool for OASIS that performs this initial electronic screening to assist FDA entry reviewers by evaluating the potential risks associated with each article, and identifying those articles that may present a higher public health risk for further examination by FDA.

OASIS expedites the clearance of FDA-regulated products that present a low public health risk but only if the importer of record provides accurate and complete import information. If the FDA electronic screening evaluation of the potential public health risk is determined to be low, OASIS will transmit a message back through the FDA/CBP interface that indicates an article being imported or offered for import "May Proceed" into U.S. commerce, barring any alternate determination by CBP. A "May Proceed" message does not constitute a determination by FDA about the article's compliance status, and it does not preclude FDA action at a later time. If the FDA electronic review determines that further evaluation by FDA is necessary, FDA personnel will manually review the entry information submitted by the ACE filer and may request additional information to make an admissibility determination and/or may examine or sample the FDA-regulated article.

CBP collects in ACS four data elements to assist FDA in making admissibility decisions for FDA-regulated products: (1) The complete FDA Product Code; (2) FDA country of production; (3) FDA manufacturer and shipper; and (4) the ultimate consignee. Under the proposed rule, two of these data elements would be mandatory submissions at the time of entry in ACE or any other CBP-authorized EDI system: The complete FDA product code and FDA Country of Production.

In ACS, filers are also able to make optional submissions of certain information such as Affirmations of Compliance regarding requirements related to the FDA-regulated product. By submitting data using an Affirmation of Compliance Code, the filer affirms that the firm or FDA-regulated article identified in an entry line meets the requirements specific to each Affirmation of Compliance Code. FDA publishes a list of current Affirmation of Compliance Codes on the FDA Web site at *http://www.fda.gov/forindustry/importprogram/entryprocess/entrysubmissionprocess/ucm461234.htm.*

Submissions of Affirmations of Compliance assist FDA in expediting the initial screening and further review of an entry, and can significantly increase the likelihood that an entry line will receive an automated "May Proceed." The number of Affirmation of Compliance submissions in ACS has varied depending on the commodity. For example, in 2015 approximately 98 percent of entry lines that are or include a medical device have at least one Affirmation of Compliance Code submitted in ACS, but only 24 percent of entry lines that are or include an animal drug have at least one of the Affirmations of Compliance Codes.

We propose to make mandatory, at the time of entry in ACE, submission of certain data elements (that have been submitted in ACS) in order to more effectively and efficiently screen for those FDA-regulated products which are likely to pose a low public health risk. Historically, when these data fields are inaccurate or incomplete, these entries must be manually reviewed for an admissibility determination by FDA. Entries are delayed, sometimes significantly, while FDA reviewers either search for that information in our data systems or request followup documentation from the importer of record. An automated review to determine whether an article "May Proceed" is much faster and less resource intensive for FDA and the importer than a manual review. For example, the average time for the OASIS system to process an import entry submitted in ACS in 2015 and issue an automated "May Proceed" determination was approximately 24 minutes whereas the average time for an FDA-reviewer to manually review and issue a "May Proceed" determination was about 28 hours. FDA expects that mandatory submission of these data elements will increase the number of import entries of FDA-regulated products that receive an automated "May Proceed" determination. The average time for FDA to issue an automated "May Proceed" determination is expected to be faster for entries to be submitted in ACE than it was for entries submitted in ACS. As a result of a more streamlined import process, the proposed rule is expected to lead to a more effective use of FDA and importer resources, and more efficient enforcement of section 801(a) of the FD&C Act.

The PGA Message Set in ACE also includes optional submission of information relevant to FDA's admissibility determination on FDA-regulated products. We strongly encourage ACE filers to submit the optional data elements in the PGA Message Set at the time of entry if the importer of an FDA-regulated product is interested in an expedited admissibility review on its products by the Agency (see the FDA Supplemental Guidance which includes the optional data elements published at: *http://www.fda.gov/downloads/ForIndustry/ImportProgram/UCM459926.pdf).* Accurate and complete information submitted by an ACE filer increases the likelihood that an entry line will receive an automated "May Proceed" determination from FDA.

For example, the PGA Message Set in ACE contains optional active pharmaceutical ingredient (API) data elements for finished human and animal drugs. The API data elements include the name of the API, the amount and unit of measure of the API in the finished drug, and the name of the manufacturer of the API in the finished drug. FDA believes that submission of this additional information may expedite import entry review by facilitating electronic "May Proceed" determinations for low risk drugs. FDA invites comments on the advantages, disadvantages, and feasibility of providing these API data elements for human and animal drugs, if they were to become mandatory data elements for entry filing in ACE.

FDA also invites comments on the advantages, disadvantages, and feasibility of requiring the submission of data elements related to the approval or clearance status of FDA-regulated medical products. We propose to require the submission at the time of entry of application numbers for those articles that are the subject of such applications. In particular, we invite comment on whether the submission of these data elements will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

Additionally, FDA invites comments on the advantages, disadvantages, and feasibility of the Agency requiring the submission of the following data elements in ACE at the time of entry: (1) An intended use code for the FDA-regulated article being imported or offered for import and (2) a disclaimer indicating that that the article is not currently regulated by FDA or that FDA does not currently have any requirements for submission of data for importation of that article per Agency guidance. Submission of intended use codes assists us in differentiating between products in the same product category which may have the same product code. For example, an ACE filer would submit in ACE at the time of entry an intended use code "For Human Medical Use as a Medical Device" as the intended use for a medical device, accessory, or component that is regulated as a finished medical device for use in humans. Use of another intended use code would inform the Agency that the finished medical device for use in humans is only to be used for research and development as a medical device, for bench testing or nonclinical research use or as a device sample for customer evaluation.

By submitting a disclaimer in ACE at the time of entry, the ACE filer indicates that the article being imported or offered for import is not currently regulated by FDA or that FDA does not currently have any requirements for submission of data for importation of that article per Agency guidance.

In particular, we invite comment on whether the submission of these data elements would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers, if they were to become mandatory FDA data elements for entry filing in ACE.

FDA announced its participation in the National Customs Automation Program (NCAP) test in the **Federal Register** in August 27, 2015 (80 FR 52051). An increasing number of filers are currently filing entries of FDA-regulated products in ACE. Although our NCAP test ended May 2, 2016, CBP is allowing the filing of entries for FDA-regulated products in ACS to continue in order to provide more time for the trade community to transition to ACE (81 FR 18634, March 31, 2016). In the **Federal Register** on May 16, 2016 (81 FR 30320), and May 23, 2016 (81 FR 32339), CBP announced that effective June 15, 2016, and July 23, 2016, respectively, ACE will be the sole EDI system for electronic entry and entry summary filings for merchandise specified in the notices and subject to the import requirements of FDA, and ACS will no longer be a CBP-authorized EDI system for purposes of processing such filings. CBP will continue to monitor FDA filing rates in ACE and should there be a need to avoid a substantial adverse impact on trade, CBP will reassess the transition completion date for FDA filings (81 FR 30320 at 30321).

IV. Legal Authority

FDA has the legal authority under the FD&C Act and the PHS Act to regulate foods, cosmetics, drugs, biological products, medical devices, and tobacco products being imported or offered for import into the United States (sections 701 and 801 of the FD&C Act; section 351 of the PHS Act). We also have the legal authority to regulate the importation of radiation-emitting electronic products (section 536 of the FD&C Act).

Additionally, section 361 of the PHS Act authorizes FDA to make and enforce such regulations as it judges necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or from State to State. FDA has issued regulations in part 1271 to regulate HCT/Ps. HCT/Ps that do not meet the criteria listed in § 1271.10(a) for them to be regulated solely under section 361 and the regulations in part 1271 are regulated as drugs, devices, and/or biological products under the FD&C Act and/or section 351 of the PHS Act and must follow applicable regulations, including the applicable regulations in part 1271. FDA has determined that improving the efficiency of admissibility determinations for HCT/Ps, thus improving the allocation of Agency resources, is necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries. We are therefore relying on the authority of section 361 of the PHS Act in the proposed amendments to § 1271.420. Authority for enforcement of section 361 of the PHS Act is provided by section 368 of the PHS Act.

We are also issuing this proposed rule under authority granted to FDA by section 801(r) of the FD&C Act (21 U.S.C. 381(r)), added by section 713 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA). Title VII of FDASIA provides FDA with important new authorities to help the Agency better protect the integrity of the drug supply chain. Section 801(r) authorizes FDA to require, as a condition of granting admission to a drug imported or offered for import into the United States, that the importer of record electronically submit information demonstrating that the drug complies with the applicable requirements of the FD&C Act. This information may include:

- Information demonstrating the regulatory status of the drug, such as the new drug application, the abbreviated new drug application, investigational new drug, or drug master file number;
- facility information, such as proof of registration and the unique facility identifier; and
- any other information deemed necessary and appropriate by FDA to assess compliance of the article being offered for import.

Section 701(a) of the FD&C Act authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act, while section 701(b) of the FD&C Act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act. These regulations would be jointly prescribed by FDA and the Department of the Treasury, with the exception of the provisions of the proposed rule related to the importation of HCT/Ps which are regulated solely under section 361 of the PHS Act and part 1271 and the importation of radiation-emitting electronic products which are regulated under section 536 of the FD&C Act; neither of these provisions will be issued for the efficient enforcement of section 801 of the FD&C Act.

V. Description of the Proposed Rule

We propose to add subpart D to part 1 of 21 CFR Chapter I to require certain data elements for FDA-regulated products to be submitted in ACE or any other CBP-authorized EDI system, at the time the electronic entry is filed. If an ACE filer fails to submit any of the data elements specified in proposed subpart D applicable to the entry, the entry will be rejected. All but four of the data elements specified in proposed subpart D are currently collected in ACS. The two new required submissions in proposed § 1.72 which apply to food contact substances, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products, are a name, telephone number, and email address for one of the persons related to the importation of the product, which may include the manufacturer, shipper, importer of record, or Deliver to Party, and a telephone number and email address for the importer of record which we need to facilitate electronic notice under § 1.94 for certain FDA actions. The two other new required data elements, in proposed 21 CFR 1.79, are name and address of the ACE filer and brand name for tobacco products.

FDA is also proposing to make technical and clarifying amendments to parts 1 and 1005 to update certain sections of those regulations. The updates include striking references to statutes or procedures no longer in effect and clarifying that electronic notice can be given of FDA actions related to a product that is being imported or offered for import. The proposed technical amendments to part 1 consist of amendments to §§ 1.83, 1.90, and 1.94. The proposed technical amendment to part 1005 consists of an amendment to § 1005.2.

We are also proposing to revise § 1271.420 to make clear that the applicable requirements of the proposed rule would apply to HCT/Ps that are regulated solely under section 361 of the PHS Act and part 1271, except those HCT/Ps that would otherwise be exempt from these requirements.

A. Scope/Applicability

The proposed rule would apply to the submission of import entries in ACE or any other CBP-authorized EDI system for certain foods, drugs, medical devices, radiation-emitting electronic products, biological products, HCT/Ps, cosmetics, and tobacco products regulated by FDA.

B. Definitions

The proposed rule contains a number of definitions for terms used in the rule. These definitions are based on existing definitions in statutes or other FDA regulations, or are definitions commonly used by industry.

C. Data Elements that Must Be Submitted in ACE for FDA-Regulated Products

1. General Data Elements for FDA-Regulated Commodities

The proposed rule would require that the following data elements be submitted at the time of entry in ACE or any other CBP-authorized EDI system, for food as applicable, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products. The specific information to be submitted may vary depending on the article being imported or offered for import.

The required FDA data elements in the proposed rule are in addition to the data elements CBP requires for submission in ACE. The FDA required data elements specified in proposed § 1.72 generally fall into two categories: Those data elements that identify the article being imported or offered for import and those data elements that identify the person(s) who are seeking to import the article into the United States. This additional information will assist us in our efforts to more effectively and efficiently determine the admissibility of the article being imported or offered for import. All but two of the general data elements in proposed § 1.72—name, telephone number, and email address for one of the persons related to the importation of the product which may include the manufacturer, shipper, importer of record, or Deliver to Party, and telephone number and email address of the importer of record—are currently collected in ACS.

a. *Product identification information.* By more precisely identifying the article being imported or offered for import, FDA can determine what statutory and regulatory requirements apply to that article. The product identification information that FDA proposes to be required in submissions at the time of entry in ACE includes:

i. *FDA country of production.* The FDA Country of Production identifies the country where an FDA-regulated article was last manufactured, processed or grown (including harvested or collected and readied for shipment to the United States).

The FDA Country of Production may be different than the Country of Origin required by CBP for an article that is being imported or offered for import. The country of origin as defined by CBP is the country of manufacture, production or growth of the article. There is only one country of origin for each article. When an article has undergone a "substantial transformation" in a different country, CBP requires that the country of origin be changed to the country where the substantial transformation has taken place. Substantial transformation occurs in the country where the article acquired the name, character or intended use that matches the article identified in the entry. The substantial transformation test is applied by the importer of record to the facts and circumstances of each case. The FDA Country of Production, however, is the country where the article last underwent any manufacturing or processing but only if such manufacturing or processing was of more than a minor, negligible or insignificant nature.

ii. *The complete FDA Product Code.* The FDA Product Code is an alphanumeric code that is used by us for classification and analysis of regulated products. The FDA Product Code builder application is currently available on FDA's Web site at *http://www.accessdata.fda.gov/SCRIPTS/ORA/PCB/PCB.HTM.* The Product Code builder application allows ACE filers to locate or build the appropriate FDA Product Code. The FDA Product Code is based on the following five components.

- Industry designates the broadest area into which a product falls;
- class is directly related to an industry and designates the food group, source, product, use, pharmacological action, category, or animal species of the product;
- subclass designates the container type, method of application, use, market class, or type of product and relates directly to a particular Industry grouping by utilizing a unique set of definitions specific to those products;
- Process indicator code specifies the process, storage or dosage form depending on the type of product; and
- product relates to a particular industry/class combination.

The complete FDA Product Code is a critical data element for our admissibility review because it clearly identifies the type of article that is being entered in ACE, which allows FDA to determine which statutory and/or regulatory requirements apply to that article. Under the proposed rule, the complete FDA Product Code entered in ACE would be required to agree with the invoice description of the article.

iii. *FDA Value.* FDA is proposing to require that the total value of an entry as required by CBP or the total value of the article(s) in each import line be submitted at the time of entry in ACE. CBP requires that the value of an entry based on the invoice value of the shipment in U.S. dollars (rounded off to the nearest whole dollar) be submitted in ACE at the time of entry. Submission by an ACE filer of the value of an entry is necessary because all goods imported into the United States are subject to the provisions of the Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes (HTS), that is published by the U.S. International Trade Commission as directed by Congress in section 1207 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418; 19 U.S.C. 3007) regarding any duties to be paid for importation of the article(s) contained in that entry. For FDA-regulated products, we propose to allow the ACE filer to choose whether to submit the total value of the entry as reported to CBP or to apportion the value of the entry to the total value of the article(s) in each import line at the time of entry in ACE. If an ACE filer chooses to submit the total value for the article(s) in each import line, that value must match the total invoice value of the article(s) in that import line.

We invite comments on the advantages, disadvantages, and feasibility of allowing the ACE filer to submit the total value of the entry or the total value apportioned to the article(s) in each import line. In particular, we invite comment on whether the submission by an ACE filer of the value apportioned to the article(s) in an import line in ACE at the time of entry will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

iv. *FDA Quantity.* FDA is proposing to require submission of the quantity of the FDA-regulated article(s) in each import line at the time of entry in ACE. Quantity would include the quantity of each layer/level of packaging of the article(s), the unit of measure which is the description of each type of package, and the volume and/or weight of each of the smallest of the packaging units. The quantity would be required to be submitted in decreasing size of packing unit (starting with the outermost/largest package to the innermost/smallest package). An example of a quantity description that would be submitted in ACE at the time of entry includes these layer/levels of packaging: 200 cases of surgical gauze, 100 rolls per case and 75 square yards of surgical gauze per roll.

Quantity and packaging help us identify the article as a specific FDA-regulated product. Although CBP and FDA utilize the HTS codes to generally identify which imports are subject to an FDA admissibility review, these codes are often not sufficient to specifically identify a product for FDA decisionmaking. There are several products that FDA considers to be different from each other because of how the product is packaged. Packaging can also affect the potential safety of an FDA-regulated product particularly where an article is represented at time of entry as "sterile." In addition, FDA submission of the quantity in ACE at the time of entry would assist the Agency in performing any needed followup action on an entry line such as field examinations, label examinations, sample collections, detentions, and refusals. Thus, the initial availability of quantity per import line would increase efficiency and expedite FDA activities throughout the admissibility process.

We invite comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the FDA quantity of the article(s) in each import line in ACE at the time of entry. In particular, we invite comment on whether the submission by an ACE filer of the FDA quantity of the article(s) in an import line will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

b. *Entity identification information.*

i. *Entity contact information.* The proposed rule would require that the name, telephone, and email address of any one of the persons related to the importation of the article(s) in the entry, which may include the manufacturer, shipper, importer of record, or Deliver to Party, be submitted in ACE at the time of entry. This information would facilitate FDA's decisionmaking on admissibility of an entry because FDA would have the information to quickly and easily contact a person with knowledge of the entry regarding questions about the entry and/or a particular import line in the entry.

We invite comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the name, telephone, and email address of any one of the persons related to the importation of the article(s) in the entry, in ACE at the time of entry. In particular, we invite comment on whether the submission by an ACE filer of this information will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

ii. *Importer of record contact information.* We are proposing to require that the email and phone number of the importer of record be submitted in ACE at the time of entry. This information will provide us with the contact information for the importer of record to enable us to contact that person with any questions about the import entry as well as send notices of FDA Actions such as detention, refusal, and/or administrative destruction electronically to that person.

We are proposing to revise § 1.94 to clarify that electronic notice may be sent by the Agency to the owner or consignee, which will be defined in § 1.83 as the importer of record, for detention, refusal, and/or administrative destruction of an FDA-regulated article being imported or offered for import into the United States. A refused drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) is subject to administrative destruction (section 801(a) of the FD&C Act). Obtaining a current email address for the importer of record is critical to FDA's ability to provide such electronic notice. We are also requiring a telephone number to contact the importer of record in the event that the email address submitted in ACE is incorrect or out of date.

2. Food

For purposes of this rule, food means foods as defined in section 201(f) of the FD&C Act (21 U.S.C. 321(f)) (see proposed § 1.71(i)). Examples of food covered by this rule include fruits, vegetables, fish, including seafood, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

One aspect of importation of food via ACS and ACE is regulated under the Prior Notice of Imported Food regulation, part 1, subpart I. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) (the BT Act) amended the FD&C Act by adding section 801(m) requiring prior notification of imported food. In accordance with section 801(m)(1) of the FD&C Act, we published a final rule in the **Federal Register** on November 7, 2008 (73 FR 66294).

For every article of food imported or offered for import into the United States, except those articles identified in §§ 1.276(b)(5)(i) and 1.277(b), the information required under § 1.281 must be submitted in ACS or the FDA Prior Notice System Interface (PNSI) before the arrival of that food article in the United States. Food articles imported or offered for import without adequate prior notice are subject to refusal under section 801(m) of the FD&C Act. The prior notice regulation under § 1.280 requires that prior notice information be submitted via ACS or via PNSI. We issue a Prior Notice Confirmation Number (PN Confirmation Number) when prior notice has been submitted and confirmed for review (§ 1.279(d)). We use prior notice information to make decisions, based on public health risk, about which food to inspect at the port of arrival.

If the prior notice information required under § 1.281 for a food article is submitted via ACS simultaneously with the required entry information, no additional transmission of information for the admissibility determination on that food article under section 801(a) of the FD&C Act is necessary. If prior notice is submitted via PNSI, additional transmission via ACS for the import entry may be necessary for CBP purposes and FDA's admissibility determination under section 801(a) of the FD&C Act (see 68 FR 58976, October 10, 2003). The PN Confirmation Number must be submitted into ACS at the time of the food's arrival into the United States under § 1.279(g).

This proposed rule does not address or impact the current import entry review process for food articles requiring prior notice; this process will be operationally transitioned from ACS to ACE.

a. *FDA Value.* We are proposing to require the submission in ACE at the time of entry of the FDA Value described in § 1.72(a)(3) of the proposed rule, for all food being imported or offered for import into the United States. FDA Value is explained earlier in the General Data Elements for FDA-Regulated Commodities section. As noted in that section, we are inviting comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit this information in ACE at the time of entry

b. *Food contact substances.* For the purposes of prior notice, food contact substances are exempted from the definition of food under § 1.276(b)(5)(i)(A) and are, therefore, not subject to the requirements under the prior notice regulation. We are proposing to require the submission in ACE at the time of entry of the general data elements described in § 1.72 of the proposed rule, for food contact substances being imported or offered for import into the United States. This additional information will assist us in our efforts to more effectively and efficiently determine admissibility of the food contact substance being imported or offered for import.

c. *Acidified and low-acid canned food data.* If the article of food being imported or offered for import is an acidified food (AF) or a thermally processed low-acid canned food packaged in a hermetically sealed container (LACF), we propose that the Food Canning Establishment (FCE) Number, the Submission Identifier (SID), and the can dimensions or volume (*e.g.*, pouches and bottles) be required submissions in ACE at the time of entry.

Although some hermetically sealed containers (*e.g.*, pouches and glass bottles) used to package thermally processed low-acid food would not be viewed as "cans", the term "low-acid canned food" has been used for decades as a shorthand description for "thermally processed low-acid foods packaged in hermetically sealed containers". We continue to use that term (and its abbreviation, LACF) for the purposes of this document.

Botulism, a rare but serious paralytic illness that can be fatal, is one of the serious public health risks associated with inadequate or improper manufacture, processing or packaging of AF and LACF. Every commercial processor, when engaging in the manufacture, processing, or packing of an AF or LACF, is required to register and file with FDA information including the name of the establishment, principal place of business, the location of each establishment in which the processing of acidified foods or low-acid canned foods is carried on, the processing method, and a list of foods so processed in each establishment. (21 CFR 108.25(c)(1) and (j); 21 CFR 108.35(c)(1) and (k)). After an establishment is registered, FDA assigns a unique FCE number identifying the physical processing plant located at the address on the registration form (currently Form FDA 2541). The FCE registration requirement in 21 CFR part 108 for LACF and AF commercial processors is different from the Food Facility Registration (FFR) that is required under section 415 of the FD&C Act (21 U.S.C. 350d) for domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States. The registration requirement in section 415 of the FD&C Act was created by the BT Act and amended by the FDA Food Safety Modernization Act (Pub. L. 111–353). AF and LACF commercial processors must register with FDA as required in part 108 using Form FDA 2541, and must also register with FDA under the FFR system using Form FDA 3537 as required by section 415 of the FD&C Act. We use the term "FFR" interchangeably with the term "BT Act registration."

After registering, the commercial processor must also, no later than 60 days after registering with FDA and before packing a new product, provide FDA with information on the scheduled processes for each AF and LACF in each container size (§ 108.25(c)(2) and (j); § 108.35(c)(2) and (k)). When processors submit a process filing form, they include the FCE number for the location of the processing plant where the product will be manufactured, processed, or packed. The FCE number on the process filing form links the process filing to the establishment (Ref. 2).

The filed scheduled process is required to provide certain information relevant to the processing of each AF and LACF, including information related to heat during processing, among other requirements (§§ 108.25(c)(2) and 108.35(c)(2)). A manufacturer of an AF and LACF product, such as canned corn in brine, is required to file separate scheduled processes for each type and sized container.

When processors use the electronic AF/LACF system to create a process filing, the system automatically generates a SID. When the processor creates a process filing using a paper form, the processor generates the SID and includes it on the paper form. A SID identifies each process filing, and consists of the year, month, and day of the month that a process filing form is created, and a unique sequence number to identify each form when multiple forms are created on the same day. An FCE can have multiple SIDs. The SID enables both the commercial processor and FDA to quickly and accurately identify a specific process filing.

To effectively identify an AF or LACF article that is being imported or offered for import, we need information regarding that product's FCE, SID, and can dimensions or volume. This information allows us to match the specific AF or LACF article being imported or offered for import to the applicable scheduled process and processing facility. We may use this information to verify that the scheduled processes filed for each LACF or AF corresponds to the FCE and SID submitted at the time of entry. Such identifying information assists FDA in efficiently enforcing section 801 of the FD&C Act in that it assists FDA in determining the admissibility of a given article.

3. Human Drugs

Globalization of the pharmaceutical market in the United States has resulted in dramatic increases in drug imports, complex and fragmented global supply chains, and increasing threats from counterfeit and substandard drugs.

This rule proposes to make certain information pertaining to imports of drugs regulated by FDA's CDER that importers can submit in ACS, required submissions in ACE or any other CBP-authorized EDI system.

a. *Registration and Listing.* All persons who own or operate domestic establishments that engage in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs must annually register with FDA, with limited exceptions (section 510(b) of the FD&C Act (21 U.S.C. 360(b)); 21 CFR part 207). Every person who owns or operates any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of a drug that is being imported or offered for import into the United States, is required to annually register with FDA (section 510(i) of the FD&C Act). Each annual establishment registration must include a unique facility identifier (UFI) for each establishment under section 510(b) and (i) of the FD&C Act. Every person who registers must, at the time of registration, also file with FDA a list of all drugs they manufacture, prepare, propagate, compound, or process for commercial distribution in the United States (section 510(j) of the FD&C Act). Registration of foreign establishments must include the name of each importer of the firm's drugs that is known to the establishment and the name of each person who imports or offers for import such drugs to the United States for purposes of importation (section 510(j) of the FD&C Act).

This rule would require the submission in ACE at the time of entry of the Drug Registration Number. For purposes of this proposed rule, the Drug Registration Number that would be submitted in ACE is the UFI of the foreign establishment where the drug was manufactured, prepared, propagated, compounded or processed before being imported or offered for import into the United States.

Currently the Affirmation of Compliance Code for submission of the Drug Registration Number is "REG".

The rule would also require the submission of the Drug Listing Number in ACE. Each listed drug associated with a registration must include a unique identifier. Currently we use the "National Drug Code" (NDC) numbering system as that unique identifier. An NDC is a unique three-segment identifier that identifies the labeler, product (including, for example, specific strength and dosage form), and trade package. For purposes of this proposed rule, the Drug Listing Number is the NDC of the drug being imported or offered for import. The current Affirmation of Compliance Code for submission of the drug listing number is "DLS".

Failure to register or list in accordance with section 510 of the FD&C Act causes a drug to be misbranded under section 502(*o*) of the FD&C Act (21 U.S.C. 352(*o*)). Drugs that appear to be misbranded are subject to detention and refusal under section 801(a) of the FD&C Act.

b. *Drug application number.* A new drug must be approved by FDA before it can be marketed in the United States (section 505(a) of the FD&C Act (21 U.S.C. 355(a))). A new drug application (NDA) must be submitted to the Agency for the sale or marketing of a new drug (section 505(b) of the FD&C Act). An abbreviated new drug application (ANDA) must be submitted to the Agency for the sale or marketing of a generic drug (section 505(j) of the FD&C Act). FDA issues a unique number for each NDA or ANDA, and that number would be required to be submitted in ACE at the time of entry for each drug that is subject to an approved NDA or ANDA, under the proposed rule.

CDER also regulates certain biological products. Although the majority of therapeutic biological products are licensed under section 351 of the PHS Act, some protein products historically have been approved under section 505 of the FD&C Act. The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) changed the statutory authority under which certain protein products will be regulated by amending the definition of a "biological product" in section 351(i) of the PHS Act to include a "protein (except any chemically synthesized polypeptide)." Section 7002(e) of the BPCI Act requires that a marketing application for a biological product must be submitted under section 351 of the PHS Act, subject to certain exceptions during a 10-year transition period ending on March 23, 2020. On March 23, 2020, an approved application for a biological product under section 505 of the FD&C Act will be deemed to be a license for the biological product under section 351 of the PHS Act (section 7002(e)(4) of the BPCI Act) (Ref. 3). The number of the biologics license application (BLA) or the NDA is required to be submitted at the time of entry in ACE.

Currently the Affirmation of Compliance Code for submission of the NDA, ANDA, or BLA number in ACE is "DA".

c. *Investigational new drug application number.* The proposed rule mandates that the number of the investigational new drug application (IND) be submitted in ACE at the time of entry for a drug that is subject to an IND and is being imported or offered for import into the United States. An investigational new drug is a new drug that is used in a clinical investigation (section 505(i) of the FD&C Act and 21 CFR 312.3(b)). An investigational new drug for which an IND is in effect is exempt from the premarket approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug (part 312). Additionally, an investigational new drug for which an IND is not yet in effect may be shipped lawfully to an investigator named in the IND if the sponsor has received earlier FDA authorization to ship the drug (§ 312.40(c)(2)).

Currently the Affirmation of Compliance Code for submission of the investigational new drug application number is "IND".

4. Animal Drugs

In broad outline, the data elements required to be submitted in ACE or any other CBP-authorized EDI system, for importation of animal drugs under the proposed rule tracks those required for human drugs. The proposed rule makes certain information, pertaining to animal drug imports that importers can optionally submit in ACS, required submissions in ACE at the time of entry. As in the case of human drugs, a more streamlined import process could lead to a more effective use of FDA and importer resources, and more efficient enforcement of section 801(a) of the FD&C Act for animal drugs.

a. *Registration and listing.* All persons who own or operate domestic establishments that engage in the manufacture, preparation, propagation, compounding, or processing of an animal drug or drugs, must annually register with FDA, with limited exceptions (section 510(b) of the FD&C Act; part 207). Every person who owns or operates any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of an animal drug that is imported or offered for import into the United States is required to annually register with the FDA (section 510(i) of the FD&C Act). Each annual establishment registration must include a UFI for each establishment under section 510(b) and (i) of the FD&C Act). Every person who registers must, at the time of registration, also file with FDA a list of all drugs they manufacture, prepare, propagate, compound, or process for commercial distribution in the United States (section 510(j) of the FD&C Act). Registration of foreign establishments must include the names of each importer of the firm's drugs that is known to the establishment and the name of each person who imports or offers for import such drugs to the United States for purposes of importation (section 510(i) of the FD&C Act).

This rule would require the submission in ACE of the Animal Drug Registration Number at the time of entry. For purposes of this proposed rule, the Animal Drug Registration Number that would be submitted in ACE is the UFI of the foreign establishment where the animal drug was manufactured, prepared, propagated, compounded or processed before being imported or offered for import into the United States.

Currently the Affirmation of Compliance Code for submission of the Animal Drug Registration Number is "REG".

The rule would also require the submission of the Animal Drug Listing Number at the time of entry in ACE. Each listed animal drug associated with a registration must include a unique identifier. Currently we use the NDC numbering system as that unique identifier. An NDC is a unique three-segment identifier that identifies the labeler, product (drug formulation), and trade package. For purposes of this proposed rule, the Drug Listing Number is the NDC of the animal drug being imported or offered for import. The current Affirmation of Compliance Code for submission of the Animal Drug Listing Number is "NDC".

Failure to register and list in accordance with section 510 of the FD&C Act causes an animal drug to be misbranded under section 502(*o*) of the FD&C Act. Animal drugs that appear to be misbranded are subject to detention and refusal under section 801(a) of the FD&C Act.

b. *New animal drug application and the minor species index file.* A new animal drug must be approved, conditionally approved, or index listed by FDA before it can be legally marketed in the United States (sections 512(a)(1)(A), 571, and 572 of the FD&C Act (21 U.S.C. 360b(a)(1)(A), 360ccc, and 360ccc-1)). A new animal drug is defined, in part, as a drug intended for use in animals other than man, including any drug intended for use in animal feed, which is not generally recognized by experts as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling (section 201(v) of the

FD&C Act). Animal feed is defined in section 201(w) of the FD&C Act.

FDA issues a unique number for each new animal drug application (NADA), abbreviated new animal drug application (ANADA), and conditionally approved new animal drug application (CNADA) submitted to the Agency for approval to market a new animal drug. For a new animal drug that is subject to an approved application under section 512(b)(1) or (2) of the FD&C Act, the number corresponding to the NADA or ANADA, respectively, is required to be submitted in ACE at the time of entry under the proposed rule. Under the proposed rule, for new animal drugs that are subject to a conditionally approved application an ACE filer would be required to submit in ACE at the time of entry the number corresponding to the conditionally approved application (section 571 of the FD&C Act).

Under the proposed rule, the Minor Species Index File number (MIF) of the new animal drug on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (Index) would be required to be submitted in ACE at the time of entry for articles that are being imported or offered for import that are legally marketed as unapproved new animal drugs for minor species (section 572 of the FD&C Act).

The Minor Use and Minor Species Animal Health Act of 2004 (Pub. L. 108–282) (MUMS Act) signed into law on August 2, 2004, amended the FD&C Act to provide animal drug companies with incentives to develop new animal drugs for minor species and minor uses in major species, while still ensuring appropriate safeguards for animal and human health. The index is limited to minor species for which there is reasonable certainty the animal or edible products from the animal will not be consumed by humans or food-producing animals. Minor species are those animals, other than humans, that are not one of the major species (horses, dogs, cats, cattle, pigs, turkeys, and chickens). Minor species include animals such as zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species including sheep, goats, catfish, game birds, and honey bees among others. Upon request by a sponsor and under the other requirements in section 573 of the FD&C Act (21 U.S.C. 360ccc–2), FDA may add a drug intended for use in a minor species or for a minor use in a major species to the Index. The Index can be found at *http://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/MinorUseMinorSpecies/ucm125452.htm.*

Currently the Affirmation of Compliance Code for submission of the NADA, CNADA, or MIF number is the Veterinary New Animal Drug Application Number "VNA". The current Affirmation of Compliance Code for the ANADA number is the Veterinary Abbreviated New Animal Drug Application Number "VAN".

c. *Investigational new animal drugs.* The proposed rule mandates that the investigational new animal drug (INAD) file number or the generic investigational new animal drug file (JINAD) number be submitted in ACE at the time of entry for articles that are subject to investigational new animal drug or generic investigational new animal drug applications under 21 CFR part 511. An investigational new animal drug is an animal drug that is used in a clinical investigation, or for tests in vitro or in animals only used for laboratory research purposes. An investigational new animal drug for which an INAD is in effect in accordance with part 511 is exempt from the premarket approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug (§ 511.1).

CVM issues a unique number that corresponds to each INAD and JINAD file that is established. Currently the Affirmation of Compliance Code for the INAD or JINAD is the Veterinary Investigational New Animal Drug Number "VIN".

5. Medical Devices

A medical device is an article intended to either: (1) Diagnose a disease or condition or cure, mitigate, treat or prevent a disease or (2) affect the structure or any function of the body, and that does not achieve its primary intended purposes by chemical action or being metabolized (section 201(h) of the FD&C Act). The proposed rule covers only those medical devices intended for use in humans. Medical devices can be as simple as a tongue depressor or as complex as a robotic surgery device. FDA has issued rules to regulate medical devices that are intended to be introduced in U.S. commerce and these can be found at 21 CFR parts 800–900. The classification of a medical device under section 513 of the FD&C Act (21 U.S.C. 360c) determines, in part, the extent of FDA's regulation of that medical device. There are currently 1700 generic groups of medical device types that are classified within 16 medical specialties (21 CFR parts 862–892). Class I devices (approximately 780 medical devices) are considered to be low risk, class II devices (approximately 800 medical devices) are considered to be medium risk, and class III devices (approximately 100 medical devices) are considered to be high risk. Class III devices include certain medical devices that are life-supporting or life-sustaining, are for a use that is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (21 CFR 860.3(c)(3)). Because class III devices are considered to be high risk, most class III devices require premarket approval from FDA before they can be introduced into interstate commerce.

The proposed rule would make the following information for medical devices regulated by FDA's Center for Devices and Radiological Health (CDRH) required submissions in ACE or any other CBP-authorized EDI system, at the time of entry. All of this information can currently be submitted in ACS.

a. *Registration and listing.* The proposed rule would require that the applicable Registration and Listing Numbers of the Domestic Manufacturer, Foreign Manufacturer, and/or Foreign Exporter for each medical device identified in the entry, be submitted in ACE at the time of entry. Any owner or operator of an establishment, not exempt under section 510(g) of the FD&C Act, that is engaged in the manufacture, preparation, propagation, compounding, or processing of a medical device intended for human use must register on an annual basis and submit listing information to FDA for those medical devices intended for commercial distribution (section 510 of the FD&C Act). Foreign establishments are required to designate a U.S. agent and submit the name, address, and telephone number of that agent as part of their registration under 21 CFR 807.40. Such establishments are also required to register and list the name and contact information, and registration number, if any has been assigned, of each known importer or any person who imports or offers to import the establishment's medical devices into the United States (21 CFR 807.41).

A Foreign Exporter is required to register and list the medical devices it imports into the United States (section 510(i) of the FD&C Act; 21 CFR 807.20). FDA considers a foreign establishment that only exports medical devices to the United States to be engaged in the manufacture, preparation, propagation, compounding, or processing of a medical device which requires registration and listing (see Response to

Comment 5 in 77 FR 45927 at 45930, August 2, 2012).

When a registrant successfully completes the required registration process, a unique Registration Number is assigned by FDA. The current Affirmation of Compliance Codes for submission of the registration number of a Domestic Manufacturer is "DDM"; of a Foreign Manufacturer is "DEV"; and of a Foreign Exporter is "DFE."

The information required to be submitted for each listed medical device, as enumerated in part 807, includes the proprietary or brand name(s) under which each medical device is marketed and the activities or processes that are conducted on or done to the medical device at each establishment (*e.g.*, manufacturing, repacking, relabeling, developing specifications, remanufacturing, single-use device reprocessing, contract manufacturing, or contract sterilizing). When the listing process is complete, FDA issues a Device Listing Number for each medical device associated with the registration. While the Registration Number is publicly available, the Device Listing Number is not available to the public. The current Affirmation of Compliance Code for the Device Listing Number that must be submitted in ACE is "LST." The requirements for registration and device listing are found in part 807.

Mandatory submission of the Registration and Device Listing Numbers in ACE at the time of entry serves as a safeguard against substandard and counterfeit medical devices entering the U.S. market. Medical devices manufactured for other countries may not be as safe and effective as medical devices made for the U.S. market. Additionally, medical devices from foreign manufacturers that were not initially intended for sale in the United States may not be adequately stored or maintained, which can affect package integrity, sterilization, and other issues relating to the medical device's performance capabilities. Package labeling for these products may not comply with the requirements for distribution in the United States as the labeling may not be in English, may not contain adequate directions for use, and/or may not comply with other labeling requirements for the U.S. market. All of these issues can impact patient safety.

A medical device that is manufactured, prepared, propagated, compounded, or processed by an establishment that fails to register and/or that is not listed as required in section 510 of the FD&C Act is deemed misbranded (section 502(*o*) of the FD&C Act). Medical devices that appear to be misbranded are subject to detention and refusal (section 801(a) of the FD&C Act).

b. *Investigational devices.* An investigational device is a medical device that is the object of a clinical investigation or research involving one or more subjects to determine the safety or effectiveness of a medical device (21 CFR 812.3(g) and (h)). An investigational device exemption (IDE) permits a medical device that otherwise would be required to be approved or cleared by us to be lawfully introduced into interstate commerce for the purpose of conducting investigations.

The IDE regulations (21 CFR part 812) describe three types of device studies: significant risk (SR), nonsignificant risk (NSR), and exempt studies. For a study determined to be SR, the sponsor must submit an IDE application to FDA for the investigational device and obtain the Agency's approval before beginning the study (§ 812.20). A medical device used in an NSR study is considered by FDA to have an approved IDE, as long as the sponsor satisfies the requirements set forth in § 812.2(b). Devices used in exempt studies are not required to have an approved IDE.

The current Affirmation of Compliance Code for investigational devices is "IDE." The proposed rule would require that an ACE filer submit in ACE at the time of entry, in the data field for the "IDE" code in ACE, for an investigational device that is being imported or offered for import: (1) The IDE number for a medical device granted an exemption under section 520(g) of the FD&C Act (21 U.S.C. 360j(g)) or (2) "NSR" for a medical device to be used in a nonsignificant risk or in an exempt study.

An investigational device that lacks a required IDE is deemed adulterated and misbranded (sections 501(f)(1) and 502(o) of the FD&C Act). Medical devices that appear to be adulterated and/or misbranded are subject to detention and refusal (section 801(a) of the FD&C Act).

c. *Premarket number.* In ACS, there are separate submissions for Premarket Approval and Premarket Notification Numbers. Under the proposed rule, there would be only one submission in ACE at the time of entry: Premarket Number "PM#." The Premarket Number that would be a required submission in ACE at the time of entry is the following number/unique identifier that is issued by FDA:

- Premarket Approval Application (PMA) Number for those medical devices that have received pre-market approval under section 515 of the FD&C Act (21 U.S.C. 360e);
- Product Development Protocol (PDP) Number for those medical devices for which FDA has declared the PDP complete under section 515(f) of the FD&C Act;
- Humanitarian Device Exemption (HDE) Number for those medical devices for which an exemption has been granted under section 520(m) of the FD&C Act;
- Premarket Notification (PMN) Number is the 510(k) number for those medical devices that have received premarket clearance under section 510(k) of the FD&C Act (21 U.S.C. 360(k)); or
- De Novo (DEN) Number is the number for those medical devices that have received marketing authorization under section 513(f) of the FD&C Act.

This change from ACS should reduce the opportunity for filer error in ACE as the applicable Premarket Number, whether it is a PMA, PDP, HDE, PMN, or DEN Number, would be entered in the one data field rather than in ACS where a PMN Number could be erroneously entered in the field for a PMA Number.

The premarket approval pathway is used by the Agency to review and evaluate the safety and effectiveness of most class III devices. The PMA must include, among other things, descriptions of the methods used in, and the facilities and controls used for, the manufacture, processing, packing, storage, and, where appropriate, installation of the medical device (§ 814.20(b)). Premarket approval is based on a determination by FDA that the PMA contains sufficient valid scientific evidence that there is reasonable assurance of the medical device's safety and effectiveness for its intended use(s). The PMA Number is the number issued by FDA upon the approval of a PMA.

Any person may submit to FDA a PDP with respect to a class III device that is required to have an approved PMA (section 515(f) of the FD&C Act). Under § 814.19, a class III device for which a PDP protocol has been declared completed by FDA is considered to have an approved PMA. The PDP Number is the number issued by FDA upon completion of the PDP.

A humanitarian use device (HUD) is a medical device that is intended to benefit patients in the treatment or diagnosis of a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year (§ 814.3(n)). A HDE is an exemption for a HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act, which is granted by FDA under section 520(m)(2) of the FD&C Act. The HDE Number is issued by FDA upon approval of the exemption.

A PMN Number is the 510(k) number for those medical devices that have received premarket clearance from FDA based on a demonstration that the medical device to be marketed is substantially equivalent to a legally marketed predicate device that is not subject to premarket approval (section 510(k) of the FD&C Act; part 807).

If manufacturers have received an NSE determination on a 510(k) submission or determine that there is no legally marketed predicate device upon which to base a determination of substantial equivalence for their low to moderate risk medical device, an application for marketing authorization, known as a de novo request, may be submitted to FDA under section 513(f) of the FD&C Act. When FDA grants marketing authorization for a medical device through the de novo pathway, FDA issues a DEN Number for the medical device.

A medical device that is being imported or offered for import but lacks FDA approval or clearance, and is not otherwise exempt from such approval or clearance, is deemed adulterated and misbranded under sections 501(f)(1) and 502(*o*) of the FD&C Act. Medical devices that appear to be adulterated and/or misbranded are subject to detention and refusal (section 801(a) of the FD&C Act).

d. *Component.* The proposed rule would require an ACE filer to identify at the time of entry in ACE that the article being imported or offered for import is a component of a medical device that requires further processing or inclusion into a finished medical device. Component means any raw material, substance, piece, part, software, firmware, labeling, or assembly which is intended to be included as part of the finished, packaged, and labeled medical device (21 CFR 820.3(c)). Finished medical device means any medical device *or accessory* to any medical device that is suitable for use or capable of functioning, whether or not it is packaged, labeled, or sterilized (§ 820.3(*l*)). We need this information to distinguish between a medical device component and a finished medical device that requires the submission of a "PM#." Components of a medical device may be subject to different statutory and regulatory requirements than finished medical devices so distinguishing between a component and a finished medical device (or accessory) is important in our ability to conduct an effective admissibility review. The current Affirmation of Compliance Code for a component is "CPT."

e. *Lead wire/patient cable.* Electrode lead wires and patient cables intended for use with a medical device are required to meet the performance standard in 21 CFR 898.12, unless an exemption or variance is granted by FDA. Electrode lead wires and patient cables that are declared, purported or presented as being in conformity with § 898.12 but that are not, and do not have an exemption or variance, are deemed to be adulterated (section 501(e) of the FD&C Act). A medical device that is being imported or offered for import that appears to be adulterated is subject to detention and refusal (section 801(a) of the FD&C Act). For electrode lead wires and patient cables intended for use with a medical device, the proposed rule would require an ACE filer to submit an Affirmation of Compliance with the applicable Performance Standard for Electrode Lead Wires and Patient Cables (§ 898.12) in ACE at the time of entry. The current Affirmation of Compliance Code for electrode lead wires and patient cables intended for use with a medical device is "LWC."

f. *Impact resistant lens.* The frequency of eye injuries resulting from the shattering of ordinary crown glass lenses together with the consensus of the ophthalmic community that the number of eye injuries would be substantially reduced by the use of impact-resistant lenses in eyeglasses and sunglasses led to the issue of 21 CFR 801.410. This regulation states that importers may have the tests required by § 801.410(d) conducted in the country of origin but they must make the results of the testing available, upon request, to FDA, as soon as practicable (§ 801.410(g)). The proposed rule would require submission at the time of entry in ACE of an Affirmation of Compliance with § 801.410. The current Affirmation of Compliance Code is "IRC."

g. *Convenience kit.* A convenience kit, assembled in kit form for the convenience of the purchaser or user, must be comprised of legally marketed medical devices. Convenience kits imported or offered for import have been found at times to contain recalled or unapproved medical devices. The proposed rule would require that a medical device that is a convenience kit or part of a convenience kit and is a re-import of a medical device manufactured in the United States or is an import of a medical device manufactured outside the United States be identified as such in ACE at the time of entry using the current Affirmation of Compliance Code "KIT."

h. *Investigational new drug application number.* We propose to require that the IND number be submitted in ACE at the time of entry for an article that is subject to an IND and that is a combination product consisting of at least one medical device and one investigational new drug where FDA's CDRH has been designated by FDA pursuant to 21 CFR 3.4 as the center with primary jurisdiction for the premarket review and regulation of the combination product. A combination product is defined in 21 CFR 3.2(e). CDRH may have primary jurisdiction over the following types of combination products with IND numbers: Investigational drug/device or investigational drug/device/biologic.

An investigational new drug is a new drug that is used in a clinical investigation (section 505(i) of the FD&C Act and § 312.3(b)). An investigational new drug for which an IND is in effect is exempt from the premarket approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug (part 312). Additionally, an investigational new drug for which an IND is not yet in effect may be shipped lawfully to an investigator named in the IND if the sponsor has received earlier FDA authorization to ship the drug (§ 312.40(c)(2)).

Currently the Affirmation of Compliance Code for submission of the IND number for a combination product that is subject to an IND consisting of at least one device and one investigational new drug, over which CDRH has been designated by FDA as the center with primary jurisdiction, is "IND".

We invite comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the IND number for these combination products in ACE at the time of entry. In particular, we invite comment on whether the submission by an ACE filer of this information would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

6. Radiation-Emitting Electronic Products

FDA regulates radiation-emitting electronic products in order to protect the general public from hazardous and unnecessary exposure to radiation from electronic products. FDA has the statutory authority to regulate these products (Chapter 5, subchapter C of the FD&C Act). Our radiation safety regulations for manufacturers of radiation-emitting electronic products can be found at 21 CFR parts 1000–1050.

Importers of radiation-emitting electronic products subject to an FDA performance standard are required to submit a written declaration on "Declaration of Products Subject to Radiation Control Standards," Form FDA 2877 (19 CFR 12.91). Mandatory radiation safety performance standards established by FDA are enumerated in parts 1020 through 1050. The first section of each standard defines and describes the products subject to that standard. Table 1 of part 1002.1 contains a list of products followed by a reference to any applicable standards. A completed Form FDA 2877 is currently required to be submitted with the entry (19 CFR 12.91). In ACE or any other CBP-authorized EDI system, the declarations required in Form FDA 2877 must be submitted electronically at the time of entry for those radiation-emitting electronic products subject to the standards under parts 1020 through 1050.

Radiation-emitting electronic products that are being imported or offered for import that do not have the Form FDA 2877 declarations electronically submitted in ACE at the time of entry or that otherwise appear to be noncompliant with the applicable performance standard(s) may be detained and refused (section 536 of the FD&C Act).

7. Biological Products, HCT/Ps, and Related Drugs and Medical Devices

FDA's CBER regulates biological products under sections 351 and 361 of the PHS Act and various provisions of the FD&C Act. These products include blood and blood products (including certain kinds of devices), vaccines, allergenics, tissues, and cellular and gene therapies. CBER also regulates a number of drugs approved under section 505 of the FD&C Act, including plasma volume expanders, and drugs used in the collection and processing of blood components and human cellular products. Medical devices involved in the manufacture and administration of licensed blood, blood components, and cellular products and all HIV test kits used both to screen donor blood, blood components, and cellular products and to diagnose, treat, and monitor persons with HIV and AIDs, are also regulated by CBER. Also regulated by CBER are HCT/Ps, including those HCT/Ps that meet the criteria listed in § 1271.10(a) and that are therefore subject to regulation solely under section 361 of the PHS Act and part 1271.

Submission of the following information in ACE or any other CBP-authorized EDI system, at the time of entry would allow FDA to identify, appropriately categorize, and apply the applicable statutory and regulatory requirements to these CBER-regulated products. This information would enable us to more effectively and efficiently conduct admissibility review for these articles. FDA has determined that improving the efficiency of admissibility determinations for HCT/Ps, thus improving the allocation of Agency resources, is necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries.

a. *Product name.* This data element identifies the CBER-regulated article by the name commonly associated with that article such as established name, trade name, brand name, proper name, or product description if the article does not have an established name, trade name, brand name, or proper name. This information is currently collected in ACS but would become a required submission in ACE at the time of entry under the proposed rule.

For certain products, the established name, trade name, brand name, proper name, or product description is necessary to verify compliance with an FDA approval, licensing, or registration and listing requirement. A proper name is the name designated in a biologics license issued by FDA under section 351 of the PHS Act. If no established name, trade name, brand name, or proper name is available, a product description would be required to be submitted in ACE at the time of entry. For HCT/Ps regulated solely under section 361 of the PHS Act and the regulations in part 1271 (*e.g.* tendon, bone, cornea for transplantation) that do not have established names, trade names, brand names, or proper names, a description of the type of HCT/P that complies with § 1271.370 would be required.

b. *HCT/Ps registration number and affirmation of compliance.* Human cells, tissues, or cellular or tissue-based products are articles containing or consisting of human cells or tissues intended for implantation, transplantation, infusion or transfer into a human recipient (§ 1271.3(d)). FDA is authorized to make and enforce such regulations as are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States (section 361 of the PHS Act). Under that authority, we created a unified registration and listing system for establishments that manufacture HCT/Ps. We also established donor-eligibility, current good tissue practice, and other procedures to prevent the introduction, transmission, and spread of communicable diseases by HCT/Ps.

Certain conditions provided under § 1271.420 apply to the importation of HCT/Ps regulated solely under section 361 of the PHS Act and part 1271. When an HCT/P meeting the criteria under § 1271.10(a) is offered for import, unless otherwise exempt, the importer of record must notify, either before or at the time of importation, the director of the FDA District Office having jurisdiction over the port of entry through which the HCT/P is imported or offered for import, or such officer of the district as the director may designate to act in his or her behalf, and must provide sufficient information for FDA to make an admissibility decision. Additionally, unless otherwise exempt, the HCT/P must be held intact by the importer or consignee, under conditions necessary to prevent transmission of communicable diseases, until we determine admissibility.

Most foreign manufacturers of HCT/Ps are required to register and submit a list of every HCT/P manufactured, except those exempt from registration under § 1271.15. Establishments that manufacture HCT/Ps that are regulated solely under the authority of section 361 of the PHS Act are required to register and list their HCT/Ps with CBER and to comply with the requirements of part 1271, whether or not the HCT/P enters into interstate commerce (§ 1271.1(b)(1)).

When an establishment successfully completes the required registration process, CBER assigns a unique registration number to that firm (see § 1271.27). For HCT/Ps manufactured by establishments required to register under part 1271 and regulated solely under section 361 of the PHS Act and the regulations in part 1271, FDA is proposing to require the submission of that registration number in ACE at the time of entry. The list of registered firms and product listings are publicly available at *https://www.accessdata.fda.gov/scripts/cber/CFAppsPub/tiss/index.cfm.* The current Affirmation of Compliance Code for the HCT/P Registration Number is "HRN".

For HCT/Ps regulated solely under section 361 of the PHS Act and the regulations in part 1271, FDA has established requirements in part 1271 such as applicable donor screening and testing, processing, and labeling, in order to prevent the introduction, transmission, and spread of communicable diseases by HCT/Ps. The proposed rule would require for HCT/Ps regulated solely under section 361 of the PHS Act and the regulations in part 1271 being imported or offered for import that are not otherwise exempt, that an Affirmation of Compliance with all applicable requirements of part 1271 be submitted in ACE at the time of entry. The current Affirmation of Compliance Code for HCT/Ps to affirm compliance with Part 1271 is "HCT".

c. *CBER-regulated licensed biological products.* A biological product is defined as a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings (section 351(i) of the PHS Act). The introduction or delivery for introduction into interstate commerce of any biological product, including certain devices, without a biologics license in effect for that specific product is prohibited (section 351(a)(1) of the PHS Act). The BLA is a request for authorization to introduce, or deliver for introduction, a biological product into interstate commerce. The licensing requirements and applicable standards for biological products are found in 21 CFR parts 600–680. CBER assigns a unique number to the original BLA or supplement and that serves as the Submission Tracking Number (STN).

Upon approval of the first BLA submitted by a manufacturer, CBER issues a Biologics License Number (BLN) to that manufacturer. A manufacturer may have several biological products with approved applications under one biologics license and each of the approved products will have its own STN.

For biological products being imported or offered for import that are subject to an approved BLA, the applicable BLN and/or STN would be a required submission in ACE at the time of entry. Currently the Affirmation of Compliance Code for submission of the BLN or STN in ACE is "BLN" or "STN". Failure to obtain an approved BLA as required under section 351 of the PHS Act subjects a biological product that is being imported or offered for import to detention and refusal under section 801(a)(3) of the FD&C Act.

d. CBER-regulated human drugs.

i. *Drug registration and listing.* The proposed rule would require that the Drug Registration Number be submitted in ACE at the time of entry, as explained earlier in the Human Drugs section, and this number would also be submitted for those articles that are CBER-regulated drugs. Currently the Affirmation of Compliance Code for submission of the Drug Registration Number is "REG".

The rule would also require the submission of the Drug Listing Number in ACE at the time of entry, as explained earlier in the Human Drugs section, and this number would also be submitted for those articles that are CBER-regulated drugs. The current Affirmation of Compliance Code for submission of the Drug Listing Number is "DLS".

We invite comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the Drug Listing Number for those articles that are CBER-regulated drugs. In particular, we invite comment on whether the submission by an ACE filer of this information will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

ii. *Drug application number.* In addition, the proposed rule would require that the number of the NDA or the number of the ANDA be submitted in ACE at the time of entry for those articles that are CBER-regulated drugs subject to an approved NDA or ANDA. Currently the Affirmation of Compliance Code for submission of the NDA or ANDA number in ACE is "DA".

iii. *Investigational new drug application number.* The proposed rule would require the number of the IND also be submitted in ACE at the time of entry for those CBER-regulated articles, including unapproved drugs and unlicensed biological products that are subject to an IND under section 505(i) of the FD&C Act. Currently the Affirmation of Compliance Code for submission of the IND Number is "IND".

e. *CBER-regulated medical devices.*

i. *Registration and listing number.* For those CBER-regulated medical devices that must be registered with FDA under part 807, the proposed rule would require that the applicable Registration and Listing numbers of the Domestic Manufacturer, Foreign Manufacturer, and/or Foreign Exporter for each medical device identified in the entry, be submitted in ACE at the time of entry. The current Affirmation of Compliance Codes for submission of the registration number of a Domestic Manufacturer is "DDM"; of a Foreign Manufacturer is "DEV"; and of a Foreign Exporter is "DFE." For the Device Listing Number that would be required to be submitted in ACE at the time of entry, the current Affirmation of Compliance Code is "LST."

ii. *Premarket number.* For those CBER-regulated medical devices that require premarket approval or notification, the Premarket Number (PM#) would be required to be submitted in ACE at the time of entry. The Premarket Number would be the PMA Number for those medical devices that have received premarket approval under section 515 of the FD&C Act; the PDP Number for those medical devices for which FDA has declared the PDP complete under section 515(f) of the FD&C Act; the HDE Number for those medical devices for which an exemption has been granted for a humanitarian device under section 520(m) of the FD&C Act; the PMN Number for those medical devices that have received premarket clearance under section 510(k) of the FD&C Act; or the DEN Number for those medical devices that have received marketing authorization under section 513(f) of the FD&C Act. As explained earlier, under the proposed rule, there is only one Affirmation of Compliance Code that covers PMA, PDP, HDE, PMN and DEN Numbers: Premarket Number "PM#".

iii. *Components.* For those articles that are a component of a CBER-regulated medical device and that require further processing or inclusion into a CBER-regulated medical device, an affirmation that the article is such a component (CPT) would be required to be submitted in ACE at the time of entry. The current Affirmation of Compliance Code for a component is "CPT."

iv. *Investigational medical devices.* The current Affirmation of Compliance Code for investigational medical devices is "IDE." If the CBER-regulated device is an investigational device being imported or offered for import for use in an SR study which has been granted an exemption under section 520(g) of the FD&C Act, the number of the IDE would be required to be submitted in the data field for the "IDE" Code in ACE at the time of entry. If the investigational device is being imported or offered for import for use in an NSR or exempt study, as explained earlier in the Medical Devices section, "NSR" would be submitted in the data field for the "IDE" Code in ACE at the time of entry.

8. Tobacco Products

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. A "tobacco product" means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product) but does not include an article that is a drug, a device, or a combination product (section 201(rr) of the FD&C Act). Tobacco products are not limited to products containing tobacco, but also include components, parts, or accessories of tobacco products, whether they are sold for further manufacturing or for consumer use; *e.g.* cigarette rolling papers and filters are tobacco products, whether they are sold to consumers for use with roll-your-own tobacco or are sold for further manufacturing into a product sold to a consumer, such as a cigarette.

Importers are reminded that tobacco products imported or offered for import into the United States must comply with all the applicable requirements under the FD&C Act as amended by the Tobacco Control Act. For a tobacco product to be legally marketed in the United States, it must be grandfathered or a manufacturer generally must: (1) Have submitted a pre-market tobacco application (PMTA) and received a subsequent marketing authorization order under section 910(c)(1)(A)(i) of the FD&C Act (21 U.S.C. 387j(c)(1)(A)), or (2) have submitted a substantial equivalence (SE) report under section 905(j) of the FD&C Act (21 U.S.C. 387e(j)) and received a subsequent marketing authorization order, or (3) have been granted a request for an exemption from demonstrating substantial equivalence (EXE) under section 905(j)(3) or filed a report under section 905(j)(1)(A)(ii) of the FD&C Act and waited 90 days from submission of that report. CTP issues a Submission Tracking Number for a PMTA, SE., or EXE.

We recommend that ACE filers submit the optional data elements identifying the legal marketing status of the tobacco product, as described previously, in ACE or any other CBP-authorized EDI system, at the time of entry to help us efficiently evaluate the admissibility of a tobacco product being imported or offered for import.

a. *Brand name.* The proposed rule would require that the brand name for a tobacco product be submitted in ACE at the time of entry. This data element identifies a tobacco product by the name commonly associated with it: Brand name. Along with product code, the brand name will help us with screening and targeting, to help determine which products to review manually. In addition, brand name may help FDA to determine if a tobacco product is adulterated under section 902 of the FD&C Act (21 U.S.C. 387b) or may be misbranded under section 903(a)(1) of the FD&C Act (21 U.S.C. 387c(a)(1)) or in violation of other provisions of the FD&C Act. Tobacco products that appear to be misbranded or adulterated are subject to detention and refusal (section 801 of the FD&C Act).

b. *Name and address of the ACE filer.* We are proposing to require that the name and address of the ACE filer for import entries that include a tobacco product be submitted in ACE at the time of entry. The name and address of ACE filers of imports that include a tobacco product would help to facilitate distribution by the Agency to ACE filers of materials related to the regulation and importation of tobacco products and otherwise communicate with the ACE filer.

We invite comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit this information in ACE at the time of entry. In particular, we invite comment on whether the submission by an ACE filer of the name and address of the ACE filer for import entries that include a tobacco product will help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers and whether this could be sufficiently accomplished through proposed § 1.72(b) or other means.

9. Cosmetics

The FD&C Act defines "cosmetic" as articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering the appearance and articles intended for use as a component of such articles (section 201(i) of the FD&C Act). The definition of "cosmetic," however, does not include soap (see definition in 21 CFR 701.20).

FDA regulates cosmetic products. Although we do not have the legal authority to approve cosmetic products before they enter the market, we do approve color additives used in cosmetic products (except for coal tar hair dyes). However, under section 301(a) of the FD&C Act (21 U.S.C. 331(a)), cosmetic articles that are imported or offered for import cannot be lawfully marketed in interstate commerce if they are deemed to be adulterated or misbranded, under sections 601 and 602 of the FD&C Act (21 U.S.C. 361 and 362).

The proposed rule would require the submission at the time of entry in ACE or any other CBP-authorized EDI system of only the general data elements under proposed § 1.72 for cosmetic articles being imported or offered for import into the United States.

D. Technical Amendments

1. Revisions to §§ 1.83 and 1005.2

We are proposing to revise §§ 1.83 and 1005.2 to update the legal references in those sections and to clarify the definition of "owner or consignee." When section 801 of the FD&C Act was enacted, the term used to describe the person responsible for making entry of an imported product was "owner or consignee." This term was the same term found in the relevant Customs statutes for the person required to make entry of imported merchandise. At the time section 801 of the FD&C Act was enacted, 19 U.S.C. 1483, 1484, and 1485, provided that the "consignee" was deemed to be the "owner" of imported merchandise and was required to make entry with Customs (now CBP). When FDA first issued §§ 1.83 and 1005.2 we defined "owner or consignee" as the term is used in section 801(a), (b), and, (c) of the FD&C Act to be interchangeable with the terms in the relevant provisions of the Tariff Act of 1930. Therefore, we defined "owner or consignee" "for purposes of section 801(a), (b), and (c) of the FD&C Act as . . . the person who has the rights of a consignee under the provisions of section 1483, 1484, and 1495 of the Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484, 1495)."

In 1983, the relevant provisions of the Tariff Act of 1930 were amended to change the designation of the person with the right to make entry. Section 1483 was repealed and the text of sections 1484 and 1485 was revised to provide that the person authorized to make entry is the "importer of record" who can be the owner, the purchaser, or a customs broker who is appropriately designated as such by the owner, purchaser, or consignee. FDA is now updating its regulations to bring the definition back in line with the customs terminology and to make clear that "owner or consignee" continues to mean the person authorized to make entry, now designated under customs law as the "importer of record." As a result, we are updating §§ 1.83 and 1005.2 to remove the reference to section 1483, which was repealed, and to reflect the amended language in sections 1484 and 1485. This proposed rule will clarify that, for purposes of section 801(a), (b), and (c) of the FD&C Act, the term "owner or consignee" means the person eligible to make entry under sections 19 U.S.C. 1484 and 1485, namely, the "importer of record."

2. Revisions to § 1.90

We are proposing revisions to § 1.90 to better reflect current practice of FDA and CBP regarding the issuance of notice of sampling to persons importing merchandise that FDA desires to sample. The current language of § 1.90 provides that FDA is to request that the collector of customs provide the notice of sampling. The proposed rule revises § 1.90 to allow FDA to provide this notice directly, which will normally happen through a secure electronic system. The proposed rule also updates "collector of customs" to "Customs and Border Protection" which is the Federal agency within the Department of Homeland Security that is primarily responsible for maintaining the integrity of the borders and ports of entry in the United States.

3. Revisions to § 1.94

We are proposing to revise § 1.94 to clarify that electronic notification can be provided to importers of merchandise when FDA has determined that an article being imported or offered for import may be subject to refusal of admission and/or administrative destruction. Section 1.94 states that FDA shall provide written notice in these circumstances that we currently implement by providing written notice by mail. FDA is proposing to revise this section to clarify that FDA can provide either written or electronic notification. In the case of electronic notification, the notice will usually be provided through a secure electronic system.

4. Revisions to § 1271.420

FDA has determined that improving the efficiency of admissibility determinations for HCT/Ps, thus improving the allocation of Agency resources, is necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries. We are, therefore, proposing to revise § 1271.420 to make clear that, unless otherwise exempt, importers of record importing or offering for import HCT/Ps meeting the criteria in § 1271.10(a) would be required to submit at the time of entry the applicable information under the proposed rule in ACE or any other CBP-authorized EDI system. Currently, unless they fall within an exception, importers of record for these products are required to provide sufficient information for FDA to make an admissibility decision on these products (§ 1271.420(a)).

VI. Proposed Effective Date

FDA proposes that the effective date of the final rule will be 30 days after its publication in the **Federal Register**.

VII. Economic Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this proposed rule may be a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Agency tentatively concludes that this rule would not have a significant economic impact on a substantial number of small entities covered by this proposed rule, but the impacts are uncertain so we are explicitly seeking comment on the impacts.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Summary of Benefits and Costs of the Proposed Rule

FDA is proposing a rule that would require certain data elements material to imports admissibility determination into the United States be submitted to the FDA via ACE as part of an import entry. The proposed regulation would help streamline FDA's existing admissibility procedures for FDA-regulated commodities imported or offered for import into the United States. For import entries submitted electronically, FDA would require that certain key data be submitted as a part of the import entry filing in the new ACE system. This rule proposes to make the submission of these data elements mandatory in ACE for each import entry line for the FDA-regulated commodities specified in the proposed rule for which entry requests are submitted electronically. The proposed regulation also provides further clarifications to the import process by revising sections of 21 CFR Chapter I relating to the definition of owner or consignee; the notice of sampling; and notices of FDA actions related to FDA-regulated products being imported or offered for import into the United States, such as notices of hearing on refusal of admission or destruction, to allow for electronic notification by FDA. The rule also clarifies that importers of record of human cells, tissues and cellular and tissue-based products (HCT/Ps) that are regulated solely under section 361 of the Public Health Service Act and part 1271, unless exempted, would be required to submit the applicable data elements included in the proposed rule in ACE at the time of entry.

The estimated costs of this proposed rule—and the cost savings—stem from the mandatory information that would be submitted and collected under the ACE system. In the baseline scenario for our estimates of these costs, we treated ACS as the shell for the submission of the information but assumed that without the proposed FDA regulation, the information would be collected in ACE only if voluntarily provided by ACE filers like under the current ACS system (scenario 1, table 1). An alternative baseline is CBP implementation of ACE with the data elements for the entry of FDA-regulated products (scenario 2, table 1). Under this scenario, the benefits, costs, and cost savings estimated for the proposed rule would be the same but would be attributed to ACE's full implementation. The incremental costs and cost savings of this proposed rule, should it become final, would be zero under this baseline (scenario 2, table 1). This scenario now appears likely, with the transition to ACE well-underway and the ACE system scheduled to become the only CBP-authorized EDI system for the electronic filing of entries containing an FDA-regulated product this year.

Table 1 shows the total costs, cost savings, and other benefits of this proposed rule; the costs and cost savings are reported on an annualized basis using a 3 and a 7 percent discount rate over a 20-year time horizon. Table 1 shows that under scenario 2, the incremental effects of the proposed rule would be zero ($0); the benefits, costs, and cost savings would still be incurred but would be attributed to the implementation of ACE by CBP. Under the alternative scenario 1 the costs, cost savings, and the benefits would be incurred and attributed to this rulemaking by FDA. Annualized over a 20-year horizon, the costs of complying with this regulation (scenario 1) are between $53 million and $193 million per year with a 3 percent discount rate; these costs are between $51 million and $186 million per year with a 7 percent discount rate (table 1).

The total annualized cost savings to the entire industry cannot be fully quantified because of the lack of certain data currently available to the Agency. Partially quantifiable cost savings for scenario 1are estimated to range from $3 million to $89 million with a 3 percent discount rate; these partially quantifiable benefits are estimated to range from $3 million to $88 million with a 7 percent discount rate (table 1). Some of these cost savings to both the trade community and FDA that we are able to only partially quantify would arise from the reduced time of import entry request processing and potentially fewer and shorter product holds as a result of increased efficiency of FDA's imports admissibility process. Benefits, in terms of cost savings, to both FDA and the industry that we are able to quantify would arise from FDA simplifying the notification process on certain FDA actions taken by the Agency under section 801 of the FD&C Act by allowing electronic notification of the owner or consignee.

Other potential benefits that we are unable to quantify at this time would result from compliant FDA-regulated imports reaching U.S. consumers faster and a reduction in the number of non-compliant imports reaching U.S. consumers, thereby making the overall supply of FDA-regulated products on the U.S. market safer. Other potential benefits in the form of cost savings that we are similarly unable to quantify would also arise because by revising certain sections of 21 CFR Chapter I, the Agency would provide more clarity to the industry about the overall process of importing FDA-regulated products.

TABLE 1—TOTAL ANNUALIZED COSTS AND BENEFITS OF THE PROPOSED RULE [1]

Discount rate	Total annualized costs	Total benefits	
		Cost savings	Other benefits (not quantified)
SCENARIO 1.—The benefits, the costs and cost savings are attributed to FDA regulation			
3 percent	Range $53 million to $193 million.	Range $3 to $89 million	More efficient use of FDA's internal resources; potentially fewer import recalls; reduced misbranding; reduction of counterfeit imports on the U.S. market; increased efficiency of the overall import process due to fewer errors because of a better defined *the owner or consignee* term and the clarifications related to notice of sampling, allowing for electronic notice of hearing on refusal of admission and notice of potential destruction of drugs.
7 percent	Range $51 million to $186 million.	Range $3 million to $88 million.	More efficient use of FDA's internal resources; potentially fewer import recalls; reduced misbranding; reduction of counterfeit imports on the U.S. market; increased efficiency of the overall import process due to fewer errors because of a better defined *the owner or consignee* term and the clarifications related to notice of sampling, allowing for electronic notice of hearing on refusal of admission and notice of potential destruction of drugs.
SCENARIO 2.—The benefits, costs, and cost savings estimated under SCENARIO 1 would still be incurred, but would be attributed to the implementation of ACE			
3 percent	$0	$0	$0
7 percent	$0	$0	$0

[1] We generated lower and upper bounds using Monte Carlo simulations.

The Economic Analysis of Impacts of the proposed rule performed in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995 is available to the public in the docket for this proposed rule at *http://www.regulations.gov* (Docket No. FDA–2016–N–1487) and is also available on FDA's Web site at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 4). We invite comments on this analysis.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* portion of this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Importer's Entry Notice (OMB Control Number 0910–0046).

Description of Respondents: The respondents to this collection of information are domestic and foreign "importers of record" of FDA-regulated articles being offered for import into the United States. An "importer of record" may be the owner or purchaser of the article being imported, or a customs broker licensed by CBP under 19 U.S.C. 1641 who has been designated by the owner, purchaser, or consignee to file the import entry. There is only one importer of record per entry.

Using the estimates in the Preliminary Regulatory Impact Analysis (PRIA) for the proposed rule (Ref. 4), we have estimated there are about 59,292 owners or purchasers who seek to import FDA-regulated articles into the United States on an annual basis, and we have estimated that 97.7 percent of these owners or purchasers will use customs brokers to file their import entries in ACE, and the other 2.3 percent will file their import entries themselves. We estimate that there are a total of 4,010 filers, which includes the 1,364 owners or purchasers of the article who will file their own import entry in ACE (= 59,292 owners or purchasers of the article offered for import × (100–97.7) percent).

Description: FDA is proposing to revise the information collection request (ICR) currently approved under OMB Control Number 0910–0046 to account for the provisions of the proposed rule that provide for collection of information from importers via ACE. This ICR (titled "Importer's Entry Notice") was most recently approved by OMB on June 30, 2014, and received an expiration date of June 30, 2017. The currently approved collection of information allows the collection of several FDA data elements in ACS specific to FDA-regulated products in order for FDA to make import admissibility decisions. The ICR currently covers the following data elements for all FDA-regulated products: (1) FDA Product Code; (2) FDA country of production; (3) FDA manufacturer and shipper; and (4) ultimate consignee, as well as various affirmations of compliance specific to certain types of FDA-regulated products which an importer may submit to FDA to help facilitate FDA's review process. In making admissibility decisions FDA also uses additional entry information that CBP regulations require importers to submit (such as the entry number, importer of record, country of origin, etc.), but that information is collected under CBP statutes and regulations and ICRs managed by CBP (*e.g.,* 19 U.S.C. 1484 and 1448(b), 19 CFR 142.3, 142.16, 142.22, and 142.24, and the associated ICR approved by OMB under OMB Control Number 1651–0024). The annual recordkeeping requirements for this collection are covered by the "Customs Modernization Act Recordkeeping Requirements" information collection approved by OMB under OMB Control Number 1651–0076.

The proposed rule and information collection would streamline FDA's admissibility review of FDA-regulated products, promote more effective utilization of industry and FDA resources, including electronic screening technology, and support FDA's ability to continue to meet its statutory responsibilities under the FD&C Act and the PHS Act. The information collection aspects of the proposed rule would specify the FDA-specific data elements that would be required as part of an import entry submitted in ACE for the FDA-regulated products covered by the proposed rule being imported or offered for import into the United States. Most data elements that would be collected in ACE under the proposed rule, with certain exceptions as explained below, are currently collected in ACS and approved for collection by OMB under OMB Control Number 0910–0046. Furthermore, under the proposed rule two of the data elements currently collected in ACS—FDA manufacturer and shipper and the ultimate consignee—would no longer be collected in ACE or any other CBP-authorized EDI system.

The authority to issue this proposed regulation and to conduct the associated information collection is found in sections 801, 701 and 536 of the FD&C Act, sections 351, 361, and 368 of the PHS Act, and section 713 of FDASIA (which added section 801(r) to the FD&C Act).

The information collection provisions of the proposed rule are in proposed §§ 1.72, 1.73, 1.74, 1.75, 1.76, 1.77, 1.78, 1.79, and 1.80. Proposed § 1.72 would require certain product identifying data elements and entity identifying data elements to be submitted in ACE at the time of entry for food as applicable, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products. Proposed §§ 1.73 through 1.80 would require certain data elements to be submitted in ACE depending on the type of FDA-regulated article being imported or offered for import into the United States. Proposed §§ 1.73, 1.74, 1.75, 1.76, 1.77, 1.78, 1.79, and 1.80 apply, respectively, to certain food products; human drugs; animal drugs; medical devices; radiation-emitting electronic products; biological products, HCT/Ps, and related drugs and medical devices regulated by CBER; tobacco products; and cosmetics.

All but four of the data elements that proposed subpart D would require filers to submit in ACE are currently collected in ACS and already approved for collection under OMB Control Number 0910–0046. Two of these four new data elements would be required by proposed § 1.72, which applies to certain foods as applicable, and drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products, and are the name, telephone number and email address for one of the persons related to the importation of the product, which may include the manufacturer, shipper, importer of record, or Deliver to Party, and a telephone number and email address for the importer of record, which we need to facilitate electronic notice under § 1.94 for certain FDA actions. The other two new data elements would be required by proposed § 1.79, which applies only to tobacco products, and are the name and address of the ACE filer and brand name of the tobacco product.

FDA concludes that the proposed data element of a telephone number and email address for the importer of record (which would be required by proposed § 1.72(b)(ii)) is not subject to the requirements of the PRA because the data element falls under an exception to the term "information" under 5 CFR 1320.3(h)(1).

Under the currently approved ICR, the average time that it takes a filer to obtain and submit the four data elements and relevant affirmations of compliance information currently collected in ACS for all lines in an import entry is estimated at 8.4 minutes (0.14 hours). We did not receive any comments on the estimated burden enumerated in the ICR or its estimate of an average of 8.4 minutes per entry. This estimate of 8.4 minutes includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and filing each entry. The estimate of 8.4 minutes is an *average* time across all import entries for FDA-regulated products and it accounts for the various realities of the entry filing process, such as the fact that the vast majority of lines (approximately 97 percent) are not unique lines, even unique lines in a single entry may contain redundant information, filers use sophisticated software that facilitates the entry filing process, and the time required per line may vary depending on the commodity and the specific characteristics of the product, manufacturer, etc.

Because two of the data elements that are currently collected in ACS—FDA manufacturer and shipper and the ultimate consignee—will not be collected in ACE or any other CBP-authorized EDI system under the proposed rule, we are reducing this estimate of 8.4 minutes to an estimate of 7.4 minutes.

In 2014, when OMB most recently approved this ICR, there was an average of 4.166 lines per entry for FDA-regulated products. We are converting the average of 7.4 minutes per entry into the average time per line. Therefore, the estimated time per import line that it takes a filer to submit the data elements that are currently approved under OMB Control Number 0910–0046 and would be submitted in ACE pursuant to the proposed rule, is approximately 1.776 minutes or 0.0296 hours (= 7.4 minutes / 4.166 lines).

The current estimated burden for this information collection approved under OMB Control Number 0910–0046, updated to account for the total number of FDA-regulated product lines submitted in ACS in 2015 (approximately 34 million lines) and annualized to account for estimated 3.3 percent increases in year two and three (for an annualized average of 35,133,681 lines in years one, two, and three), but not accounting for the estimated additional burden of the proposed rule for those lines that would be affected by the proposed rule, is approximately 1,039,957 hours (= 35,133,681 lines × 0.0296 hours).

Using the estimates in the PRIA for the proposed rule, we have estimated that 33,988,154 import lines will be impacted by the proposed rule in the first year. We have also estimated that 975,460 import lines in the first year represent unique product-manufacturer combinations (2.87 percent of the 33,988,154 import lines). We have estimated that the number of impacted import lines will grow at an average rate of about 3.3 percent per year.

Other key assumptions in Option 1 of the PRIA for the proposed rule that affect our estimate of the additional annual reporting burden are:

- Respondents would have to become aware of the rule requirements, which include activities related to reading the rule, understanding the reporting requirements, consulting with specialists if necessary, determining how to best meet these requirements and communicating these requirements to workers; and this is a one-time event that would require an average of 30 minutes.
- Respondents would require an administrative worker to locate, gather, and prepare the additional information required by this rule for each unique product-manufacturer import line; and this would require about 4 minutes (0.0667 hours) per line on average. Because FDA has concluded that the proposed data element of a telephone number and email address for the importer of record (which would be required by proposed § 1.72(b)(ii)) is not subject to the requirements of the PRA, we have reduced this estimated time to 3.8 minutes for PRA purposes (approximately 0.0633 hours).
- Respondents would require an administrative worker to complete entry request for each import line and quality check using software that is connected to ACE, and that this would require about 2 minutes (0.033 hours) per line on average. Because FDA has concluded that the proposed data element of a telephone number and email address for the importer of record (which would be required by proposed § 1.72(b)(ii)) is not subject to the requirements of the PRA, we have reduced this estimated time to 1.8 minutes (0.03 hours) for PRA purposes.
- It would take respondents about 12.5 percent more time in the first year for an administrative worker to complete an entry request for each import line and quality check using software that is connected to ACE because they would have to adjust to the new system and data elements.

We have found based on our experience that filers no longer need to take a long time to familiarize themselves with changes in laws and rules relating to imports to determine how those changes would apply to an article being imported or offered for import, because much of these updates are now software-driven. For example, importers often rely on the electronic messages CBP sends to them notifying them of changes to data requirements. Furthermore, the proposed rule is fairly short, not complex, and does not require an inordinate number of data elements to be submitted in ACE for an FDA-regulated product.

Additionally, most of the general data elements that would be required by proposed § 1.72 of the proposed rule are currently collected in ACS, so filers should be very familiar with them. Almost all the data elements that would be required by the proposed rule in proposed §§ 1.73 through 1.80 have also been available for submission in ACS as Affirmations of Compliance and have been described in various FDA memoranda to the U.S. import trade community, so most filers should be generally familiar with them as well.

Entry filing processes have evolved technologically over time. The vast majority of filers currently rely on sophisticated software, which interacts with ACS and can be programmed to interact with ACE, to perform many of the tasks and functions that were previously performed manually, such as flagging mandatory data fields, providing quality checks, and record keeping. This increased reliance on sophisticated software has substantially reduced the entry filing burden. Importers also rely on the ACE system to flag mandatory data submissions and show an error message when an entry is rejected because a required data field is empty or is not completed in the required manner.

Our estimate of the increase in the reporting burden from the proposed rule primarily accounts for the proposed rule requiring submission of some data elements in ACE that are currently routinely collected submissions in ACS. We expect that some filers who were not submitting these data elements in ACS would have to change their submissions to comply with the proposed rule, if finalized. The annual reporting burden is higher in the first year than in years after because we expect most filers to adapt to submitting the required data they had not been submitting in ACS and to electronically store such data for future repeat lines.

Of note, FDA data shows that submission rates for the data elements currently collected in ACS for many products are quite high. For example, for medical device lines, which make up approximately half of all import lines (based on 2014 and 2015 data) that would be affected by the proposed rule, approximately 98 percent are submitted with at least one affirmation of compliance, with an average of approximately three affirmations of compliance per line. Further, it appears that most medical device lines submitted in 2014 and 2015 through ACS already include most of the information that would be required in ACE by the proposed rule. Additionally, cosmetic products, which make up approximately 8 percent of all import lines (based on 2014 and 2015 data) that would be affected by the proposed rule, would require no submission of information in ACE under the proposed rule other than the general data elements specified in proposed § 1.72.

As we noted previously, we have estimated that the number of import lines affected by the proposed rule will grow at an average rate of about 3.3 percent per year. For the purposes of calculating the additional annual recurring reporting burden of the proposed rule, we have annualized those 3.3 percent per year increases for 3 years. Accordingly, we expect the additional annual recurring reporting burden for the information collection that would result from this proposed rule, once finalized, to be as follows:

TABLE 2—ESTIMATED ADDITIONAL ANNUAL RECURRING REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent (approximate)	Total annual responses	Average burden per response (in hours)	Total hours
Preparing the required information (applies to unique lines only).	59,292	17.01	1,008,337	0.0633 (3.8 minutes)	63,828
Quality checks and data submission into ACE	4,010	8,762	35,113,681	0.03 (1.8 minutes)	1,053,410
Total Hours					1,117,238

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We expect the additional one-time (*i.e.*, occurring only in the first year) reporting burden for the information collection that would result from this proposed rule, if finalized, to be as follows:

TABLE 3.—ESTIMATED ONE TIME REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent (approximate)	Total annual responses	Average burden per response (in hours)	Total hours
Review and familiarization with the rule	4,010	1	4,010	.5 (30 minutes)	2,005
First year adjusting to new requirements that would result in an average of 12.5 percent more time for quality checks and submission into ACE.	4,010	8,476	33,988,154	.00375 (0.225 minutes)	127,456
Total Hours					129,461

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Accordingly, we estimate that the additional annual reporting burden under the proposed rule, if finalized, would be 1,246,699 hours in the first year and 1,117,238 hours recurring after the first year.

As noted previously, the current estimated burden for this information collection, updated to account for the number of total FDA-regulated lines submitted to FDA in 2015 and an estimated 3.3 percent per year increase in lines in years two and three, but not accounting for the estimated additional burden of the proposed rule, is 1,039,957 hours. Therefore, we estimate that the total burden under this ICR, revised to include the estimated additional annual reporting burden under the proposed rule in addition to the current annual reporting burden, would be 2,286,656 hours in the first year (= 1,039,957 current burden + 1,117,238 recurring burden + 129,461 one-time burden) and 2,157,195 hours annually after the first year (= 1,039,957 current burden + 1,117,238 recurring burden).

In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. To ensure that comments on information collection are received, OMB recommends that written comments be faxed or emailed (see ADDRESSES). These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. References

The following references are on display in the Division of Dockets Management (see ADDRESSES) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Automated Commercial System and ABI CATAIR, CBP *http://www.cbp.gov/trade/acs/catair* (April 13, 2016).

2. FDA Guidance for Industry: *Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format.* November 2015. *http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm309376.htm.*

3. FDA Draft Guidance for Industry: *Implementation of the "Deemed to be a License" Provision of the Biologics Price Competition and Innovation Act of 2009.* March 2016. *http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm490264.pdf.*

4. FDA, Full Disclosure of Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis on Regulations on Electronic Submission of Import Data: Automated Commercial Environment Proposed Rule. Available at: *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food Labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 1005

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1271

Biologics, Drugs, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that parts 1, 1005, and 1271 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342i, 343, 350c, 350d, 350e, 352, 355, 360b, 360ccc, 360ccc-1, 360ccc-2, 362, 371, 373, 374, 381, 382, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Add subpart D, consisting of §§ 1.70 through 1.80, to read as follows:

Subpart D—Electronic Import Entries

Sec.
1.70 Scope.
1.71 Definitions.
1.72 Data elements that must be submitted in ACE for articles regulated by FDA.
1.73 Food.
1.74 Human drugs.
1.75 Animal drugs.
1.76 Medical devices.
1.77 Radiation-emitting electronic products.
1.78 Biological products, HCT/Ps, and related drugs and medical devices.
1.79 Tobacco products.
1.80 Cosmetics.

Subpart D—Electronic Import Entries

§ 1.70 Scope.

This subpart specifies the data elements that are required by the Food and Drug Administration (FDA) to be included in an electronic import entry submitted in the Automated Commercial Environment (ACE) system or any other U.S. Customs and Border Protection (CBP)-authorized electronic data interchange (EDI) system operated by the CBP, which contains an article that is being imported or offered for import into the United States and that is regulated by FDA.

§ 1.71 Definitions.

For purposes of subpart D:

ACE filer means the person who is authorized to submit an electronic import entry for an FDA-regulated product in the Automated Commercial Environment or any other CBP-authorized EDI system.

Acidified food means acidified food, as defined in § 114.3(b) of this chapter, and subject to the requirements in parts 108 and 114 of this chapter.

Automated Commercial Environment or *ACE* means the automated and electronic system for processing commercial importations that is operated by the United States Customs and Border Protection in accordance with the National Customs Automation Program established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act), or any other CBP-authorized EDI system.

Biological product means a biological product as defined in section 351(i)(1) of the Public Health Service Act.

Combination product means a product comprised of two or more regulated components as defined in § 3.2(e) of this chapter.

Cosmetic means a cosmetic as defined in section 201(i) of the Federal Food, Drug, and Cosmetic Act.

Customs and Border Protection or CBP means the Federal Agency within the Department of Homeland Security that is primarily responsible for maintaining the integrity of the borders and ports of entry in the United States.

Drug means those articles meeting the definition of a drug in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

FDA or Agency means the U.S. Food and Drug Administration.

Food means food as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act.

Food contact substance means any substance, as defined in section 409(h)(6) of the Federal Food, Drug, and Cosmetic Act, that is intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.

HCT/Ps means human cells, tissues or cellular or tissue-based products, as defined in § 1271.3(d) of this chapter.

Import line means each portion of an import entry that is listed as a separate item on an entry document.

Low-acid canned food means a thermally processed low-acid food (as defined in § 113.3(n) of this chapter) in a hermetically sealed container (as defined in § 113.3(j) of this chapter), and subject to the requirements in parts 108 and 113 of this chapter.

Medical device means a device as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, that is intended for use in humans.

Radiation-emitting electronic product means an electronic product as defined in section 531 of the Federal Food, Drug, and Cosmetic Act.

Tobacco product means a tobacco product as defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act.

§ 1.72 Data elements that must be submitted in ACE for articles regulated by FDA.

General. When filing an entry in ACE, the ACE filer shall submit the following information for food as applicable, and drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products.

(a) *Product identifying information* for the article that is being imported or offered for import. This consists of:

(1) *FDA Country of Production,* which is, the country where the article was last manufactured, processed, or grown (including harvested, or collected and readied for shipment to the United States). The FDA Country of Production for an article that has undergone any manufacturing or processing is the country where that activity occurred provided that the manufacturing or processing had more than a minor, negligible, or insignificant effect on the article.

(2) *The Complete FDA Product Code,* which must agree with the invoice description of the product.

(3) *FDA Value* which is the total value of the article(s) in an import entry or import line, rounded off to the nearest dollar, which must match the invoice value of those article(s).

(4) *FDA Quantity* which is the quantity of the article(s) in an import line delineated by packaging level, including the type of package from the largest packaging unit to the smallest packaging unit; the quantity of each packaging unit; and the volume and/or weight of each of the smallest of the packaging units.

(b) *Entity Identification Information,* (1) Name, telephone, and email address of any one of the persons related to the importation of the product which may include the manufacturer, shipper, importer of record, or Deliver to Party.

(2) Telephone and email address of the importer of record.

§ 1.73 Food.

(a) *Food.* The information specified in § 1.72(a)(3) must be submitted in ACE at the time of filing entry for food.

(b) *Food contact substances.* The information specified in § 1.72 must be submitted in ACE at the time of filing entry for food that is a food contact substance.

(c) *Low-acid canned food.* For an article of food that is a low-acid canned food, the ACE filer must submit at the time of filing entry the Food Canning Establishment Number and the Submission Identifier, and can dimensions or volume.

(d) *Acidified food.* For an article of food that is an acidified food, the ACE filer must submit at the time of filing entry the Food Canning Establishment Number and the Submission Identifier, and can dimensions or volume.

§ 1.74 Human drugs.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry for drugs, including biological products, intended for human use that are regulated by the FDA Center for Drug Evaluation and Research.

(a) *Registration and listing.* For a drug intended for human use, the Drug Registration Number and the Drug Listing Number. For the purposes of this section, the Drug Registration Number that must be submitted in ACE is the unique facility identifier of the foreign establishment where the human drug was manufactured, prepared, propagated, compounded or processed before being imported or offered for import into the United States. The unique facility identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the human drug article being imported or offered for import.

(b) *Drug application number.* For a drug intended for human use that is the subject of an approved application under section 505(b) or 505(j) of the Federal Food, Drug, and Cosmetic Act, the number of the new drug application or abbreviated new drug application. For a biological product regulated by the FDA Center for Drug Evaluation and Research that is required to have an approved new drug application or an approved biologics license application, the number of the applicable application.

(c) *Investigational new drug application number.* For a drug intended for human use that is the subject of an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, the number of the investigational new drug application.

§ 1.75 Animal drugs.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry for animal drugs:

(a) *Registration and listing.* For a drug intended for animal use, the Drug Registration Number and the Drug Listing Number for the purposes of this section, the Drug Registration Number that must be submitted in ACE is the Unique Facility Identifier of the foreign establishment where the animal drug was manufactured, prepared, propagated, compounded or processed before being imported or offered for import into the United States. The Unique Facility Identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the animal drug article being imported or offered for import.

(b) *New animal drug application number.* For a drug intended for animal use that is the subject of an approved application under section 512 of the Federal Food, Drug, and Cosmetic Act, the number of the new animal drug application or abbreviated new animal drug application. For a drug intended for animal use that is the subject of a conditionally approved application under section 571 of the Federal Food, Drug, and Cosmetic Act, the application number for the conditionally approved new animal drug.

(c) *Veterinary minor species index file number.* For a drug intended for use in animals that is the subject of an Index listing under section 572 of the Federal Food, Drug, and Cosmetic Act, the Minor Species Index File number of the new animal drug on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.

(d) *Investigational new animal drug number.* For a drug intended for animal use that is the subject of an investigational new animal drug or generic investigational new animal drug application under part 511 of this chapter, the number of the investigational new animal drug or generic investigational new animal drug file.

§ 1.76 Medical devices.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry for medical devices regulated by the FDA Center for Devices and Radiological Health.

(a) *Registration and listing.* For a medical device, the Registration Number for Foreign Manufacturers, Foreign Exporters, and/or Domestic Manufacturers, and the Device Listing Number, required under section 510 of the Federal Food, Drug, and Cosmetic Act and part 807 of this chapter.

(b) *Investigational devices.* For an investigational medical device that has an investigational device exemption granted under section 520(g) of the Federal Food, Drug, and Cosmetic Act, the Investigational Device Exemption Number. For an investigational medical device being imported or offered for import for use in a nonsignificant risk or exempt study, "NSR" to be entered in the Affirmation of Compliance for the "investigational device exemption" that identifies the device as being used in a nonsignificant risk or exempt study.

(c) *Premarket number.* For a medical device that has one, the Premarket Number. This is the Premarket Approval Number for those medical devices that have received pre-market approval under section 515 of the Federal Food, Drug, and Cosmetic Act; the Product Development Protocol Number for those medical devices for which FDA has declared the product development protocol complete under section 515(f) of the Federal Food, Drug, and Cosmetic Act; the De Novo number for those medical devices granted marketing authorization under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act; the Premarket Notification Number for those medical devices that received premarket clearance under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or the Humanitarian Device Exemption Number for those medical devices for which an exemption has been granted under section 520(m) of the Federal Food, Drug, and Cosmetic Act.

(d) *Component.* If applicable for a medical device, an affirmation identifying that the article being imported or offered for import is a component that requires further processing or inclusion into a finished medical device.

(e) *Lead wire/patient cable.* For electrode lead wires and patient cables intended for use with a medical device, an Affirmation of Compliance with the applicable performance standard under § 898.12 of this chapter.

(f) *Impact resistant lens.* For impact resistant lenses in eyeglasses and sunglasses, an Affirmation of Compliance with the applicable requirements of § 801.410 of this chapter.

(g) *Convenience kit.* If applicable for a medical device, an Affirmation of Compliance that the article imported or offered for import is a convenience kit or part of a convenience kit.

(h) *Investigational new drug application number.* For a combination product consisting of at least one medical device and one drug intended for human use that is the subject of an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, where the FDA Center for Devices and Radiological Health has been designated by FDA as the center with primary jurisdiction for the premarket review and regulation of the combination product, the number of the investigational new drug application.

§ 1.77 Radiation-emitting electronic products.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit all of the declarations required in Form FDA 2877 electronically in ACE at the time of filing entry for products subject to the standards under parts 1020–1050 of this chapter.

§ 1.78 Biological products, HCT/Ps, and related drugs and medical devices.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of entry for biological products, HCT/Ps, and related drugs and medical devices regulated by the FDA Center for Biologics Evaluation and Research.

(a) *Product name* which identifies the article being imported or offered for import by the name commonly associated with that article including the established name, trade name, brand name, proper name, or product description if the article does not have an established name, trade name, brand name or proper name.

(b) *HCT/P registration and affirmation.* (1) For an HCT/P regulated solely under section 361 of the Public Health Service Act and the regulations in part 1271 of this chapter that is manufactured by an establishment that is required to be registered under part 1271 of this chapter, the HCT/P Registration Number; and

(2) For an HCT/P regulated solely under section 361 of the Public Health Service Act and the regulations in part 1271 of this chapter, an affirmation of compliance with the applicable requirements of part 1271 of this chapter.

(c) *Licensed biological products.* For a biological product that is the subject of an approved biologics license application under section 351 of the Public Health Service Act, the Submission Tracking Number of the biologics license application and/or the Biologics License Number.

(d) *Drug registration and listing.* For a drug intended for human use, the Drug Registration Number and the Drug Listing Number. For the purposes of this section, the Drug Registration Number that must be submitted in ACE is the unique facility identifier of the foreign establishment where the human drug was manufactured, prepared, propagated, compounded or processed before being imported or offered for import into the United States. The unique facility identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the human drug article being imported or offered for import.

(e) *Drug application number.* For a drug intended for human use that is the subject of an approved application under section 505(b) or 505(j) of the Federal Food, Drug, and Cosmetic Act, the number of the new drug application or the abbreviated new drug application.

(f) *Investigational new drug application number.* For a drug intended for human use that is the subject of an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, the number of the investigational new drug application.

(g) *Medical device registration and listing.* For a medical device subject to the registration and listing procedures contained in part 807 of this chapter, the Registration Number for Foreign Manufacturers, Foreign Exporters, and/or Domestic Manufacturers, and the Device Listing Number, required under section 510 of the Federal Food, Drug, and Cosmetic Act and part 807 of this chapter.

(h) *Investigational devices.* For an investigational medical device that has an investigational device exemption granted under section 520(g) of the Federal Food, Drug, and Cosmetic Act, the Investigational Device Exemption Number. For an investigational medical device being imported or offered for import for use in a nonsignificant risk or exempt study, an Affirmation of Compliance that identifies the device as being used in such a study.

(i) *Medical device premarket number.* For a medical device that has one, the premarket number. This is the premarket approval number for those medical devices that have received pre-market approval under section 515 of the Federal Food, Drug, and Cosmetic Act; the Product Development Protocol Number for those medical devices for which FDA has declared the Product Development Protocol complete under section 515(f) of the Federal Food, Drug, and Cosmetic Act; the De Novo number for those medical devices granted marketing authorization under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act; the Premarket Notification Number for those medical devices that received premarket clearance under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or the Humanitarian Device Exemption Number for those medical devices for which an exemption has been granted under section 520(m) of the Federal Food, Drug, and Cosmetic Act.

(j) *Medical device component.* If applicable for a medical device, an affirmation identifying that the article being imported or offered for import is a component that requires further processing or inclusion into a finished medical device.

§ 1.79 Tobacco products.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE.

(a) *Brand name* of the article that is a tobacco product being imported or offered for import.

(b) *Name and address* of the ACE filer for any entry that includes an article that is a tobacco product.

§ 1.80 Cosmetics.

An ACE filer must submit the data specified in § 1.72 at the time of filing entry in ACE.

■ 3. In § 1.83, revise paragraph (a) to read as follows:

§ 1.83 Definitions.

* * * * *

(a) The term *owner* or *consignee* means the person eligible to make entry under the provisions of sections 484 and 485 of the Tariff Act of 1930, as amended (19 U.S.C. 1484 and 1485), namely, the "importer of record."

* * * * *

■ 4. Revise § 1.90 to read as follows:

§ 1.90 Notice of sampling.

When a sample of an article offered for import has been requested by the district director, FDA shall provide to the owner or consignee prompt notice of delivery of, or intention to deliver, such sample. Upon receipt of the notice, the owner or consignee shall hold such article and not distribute it until further notice from the district director or U.S. Customs and Border Protection of the results of examination of the sample.

■ 5. In § 1.94, revise the first sentence of paragraphs (a) and (c) to read as follows:

§ 1.94 Hearing on refusal of admission or destruction.

(a) If it appears that the article may be subject to refusal of admission, or that the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director shall give the owner or consignee a written or electronic notice to that effect, stating the reasons therefor. * * *

* * * * *

(c) If the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director may give the owner or consignee a single written or electronic notice that provides the notice on refusal of admission and the notice on destruction of an article described in paragraph (a) of this section. * * *

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 6. The authority citation for part 1005 continues to read as follows:

Authority: 21 U.S.C. 360ii, 360mm.

■ 7. Revise § 1005.2 to read as follows:

§ 1005.2 Definitions.

As used in this part:

The term *owner* or *consignee* means the person eligible to make entry under the provisions of sections 484 and 485 of the Tariff Act of 1930, as amended (19 U.S.C. 1484 and 1485), namely, the "importer of record."

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS

■ 8. The authority citation for part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 9. In § 1271.420, revise paragraph (a) to read as follows:

§ 1271.420 HCT/Ps offered for import.

(a) Except as provided in paragraphs (c) and (d) of this section, when an HCT/P is offered for import, the importer of record must notify, either before or at the time of importation, the director of the district of the Food and Drug Administration (FDA) having jurisdiction over the port of entry through which the HCT/P is imported or offered for import, or such officer of the district as the director may designate to act in his or her behalf in administering and enforcing this part, and must provide sufficient information, including information submitted in the Automated Commercial Environment (ACE) system or any other Electronic Data Interchange system authorized by the United States Customs and Border Protection Agency as required in part 1, subpart D of this chapter, for FDA to make an admissibility decision.

* * * * *

Dated: June 28, 2016.

Leslie Kux,

Associate Commissioner for Policy, Food and Drug Administration.

In concurrence with FDA:

Dated: June 28, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy), Department of the Treasury.

[FR Doc. 2016–15684 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0451]

RIN 1625–AA00

Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal, Chicago, IL. This action is necessary to protect spectators, participants, and vessels from the hazards associated with the Tough Cup event. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Lake Michigan.

DATES: Comments and related material must be received by the Coast Guard on or before August 1, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0451 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Lindsay Cook, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *Lindsay.N.Cook@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On December 27, 2015, the Coast Guard received an Application for Marine Event for the Tough Cup event to be held on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge. This event involves high performance rowing shells and sculls that range in size from 27 feet to 65 feet in length and oars out to 25 feet in width to race on a course along the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal. The Captain of the Port Lake Michigan (COTP) has determined that the potential hazards associated with this event would be a safety concern for participants as well as recreational and commercial traffic in or around the course where the event will take place.

The purpose of this rulemaking is to ensure the safety of vessels, persons and the navigable waters immediately before, during, and immediately after the scheduled event. The specific hazards include collisions among event participants, recreational traffic, and commercial traffic that may cause injury or marine casualties. The legal basis for this proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone on all waters of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge. This safety zone will be enforced from 6:30 a.m. to 1:00 p.m. on September 24, 2016. The safety zone enforcement times are intended to ensure the safety of persons and vessels immediately before, during and immediately after the event.

The Captain of the Port Lake Michigan has determined that the safety zone in this proposed rule is necessary to ensure the safety of vessels and people during this event. The safety zone in this proposed rule will be enforced for six and a half hours on September 24, 2016.

The Captain of the Port Lake Michigan will notify the public that the zone in this proposal will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Lake Michigan or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or his or her designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16.

IV. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of the statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a short duration on the one day this rule will be in effect to ensure safety of spectators and participants at this scheduled event. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone for the Tough Cup event scheduled to take place on September 24, 2016. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0451 to read as follows:

§ 165.929 T09–0451 Safety Zone; South Branch of the Chicago River and the Chicago Sanitary and Ship Canal, Chicago, IL.

(a) *Location.* All waters of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge.

(b) *Effective and Enforcement Period.* This rule will be effective from 6:30 a.m. to 1:00 p.m. on September 24, 2016 and will be enforced from 6:30 a.m. to 1:00 p.m. on September 24, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: June 20, 2016.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2016–15695 Filed 6–30–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51 and 52

[EPA–HQ–OAR–2015–0531; FRL–9948–53–OAR]

Protection of Visibility: Amendments to Requirements for State Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 4, 2016, the Environmental Protection Agency (EPA) proposed a rule titled, "Protection of Visibility: Amendments to Requirements for State Plans." The EPA is extending the comment period on the proposed rule that was scheduled to close on July 5, 2016. The EPA has received requests for additional time to review and comment on the proposed rule revisions.

DATES: The public comment period for the proposed ruled published in the **Federal Register** on May 4, 2016, (81 FR 26942) is being extended. Written comments must be received on or before August 10, 2016.

ADDRESSES: The EPA has established docket number EPA–HQ–OAR–2015–0531 for this action. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For additional information on this action, contact Christopher Werner, Office of Air Quality Planning and Standards, Environmental Protection Agency (C539–04), Research Triangle Park, North Carolina 27711; telephone number (919) 541–5133; email address: *werner.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: After considering the requests to extend the public comment period received from various parties, the EPA has decided to extend the public comment period until August 10, 2016. This extension will ensure that the public has additional time to review the proposed rule.

Dated: June 24, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–15493 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 127
Friday, July 1, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0039]

Notice of Request for Extension of Approval of an Information Collection; Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before August 30, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0039.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0039, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0039* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables, contact Dr. Nicole Russo, Director, Imports, Regulations, and Manuals, PHP, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 851–2159. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables.

OMB Control Number: 0579–0155.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service of the United States Department of Agriculture is authorized, among other things, to regulate the importation of plants, plant products, including fruits and vegetables, and other articles to prevent the introduction of plant pests and noxious weeds into the United States.

Regulations governing the importation of fruits and vegetables are set out in 7 CFR part 319. In accordance with the regulations, some fruits and vegetables from certain regions of the world must be treated for insect pests in order to be eligible for entry into the United States.

The regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against all insect pests including fruit flies, the mango seed weevil, and others. It may be used as an alternative to other approved treatments for these pests in fruits and vegetables, such as fumigation, cold treatment, heat treatment, and other techniques.

The regulations concerning irradiation treatment involve the collection of information, such as a compliance agreement, 30-day notification, labeling and packaging, establishment of a dosimetry system, request for dosimetry device approval, request for certification and inspection of facility, denial and withdrawal of certification, irradiation treatment work plan, trust fund agreement, recordkeeping, preclearance work plan, and phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.008 hours per response.

Respondents: National plant protection organizations of exporting countries, irradiation facility operators, and U.S. importers of fruits and vegetables.

Estimated Annual Number of Respondents: 65.

Estimated Annual Number of Responses per Respondent: 641.8.

Estimated Annual Number of Responses: 40,434.

Estimated Total Annual Burden on Respondents: 332 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–15706 Filed 6–30–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0040]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Fruit From Thailand Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of fruit from Thailand.

DATES: We will consider all comments that we receive on or before August 30, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0040.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0040* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of fruit from Thailand into the United States, contact Dr. Nicole Russo, Director, Imports, Regulations, and Manuals, PHP, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 851–2159. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fruit From Thailand Into the United States.

OMB Control Number: 0579–0308.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, APHIS regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–75).

In accordance with § 319.56–47, litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand may be imported into the United States under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including an import permit, production area registration and monitoring, recordkeeping, trust fund agreement, phytosanitary certificate with an additional declaration statement, labeling, compliance agreements, foreign site certificate of inspection and/or treatment, approved irradiation facilities, and facility operational workplans.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.023 hours per response.

Respondents: Importers of fruit from Thailand and the national plant protection organization of Thailand.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 5,594.

Estimated Annual Number of Responses: 67,129.

Estimated Total Annual Burden on Respondents: 1,527 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–15705 Filed 6–30–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Environmental Impact Statements: Tongass National Forest Land and Resource Management Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Notice of Objection Filing Period.

Title: Tongass National Forest Land and Resource Management Plan Amendment.

SUMMARY: M. Earl Stewart, the Forest Supervisor for the Tongass National Forest, Alaska Region, has prepared a Final Environmental Impact Statement (FEIS) and draft Record of Decision (ROD) for the Tongass National Forest Land and Resource Management Plan Amendment. The draft ROD selects Alternative Five.

The FEIS, draft ROD, and Forest Plan are available on the forest's Web site at *http://www.fs.usda.gov/goto/R10/Tongass/PlanAmend*. A hardcopy and further information is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The draft ROD is subject to objection under 36 CFR part 219, subpart B. A written notice of objection, including any attachments, must be submitted (regular mail, express delivery, messenger service, fax, email, or hand delivery) within 60 days of the publication date of this notice in the newspapers of record, the *Juneau Empire* and the *Ketchikan Daily News.* The newspaper notice is the exclusive means for calculating the time to file an objection (36 CFR 219.56(b)(3)). An electronic scan of this notice will be posted on the Web site noted above. Those wishing to object to the draft ROD should not rely upon dates or timeframe information provided by any other source.

Any objection must be submitted to the Alaska Regional Forester, Beth Pendleton, who is the Objection Reviewing Officer, at one of the addresses listed in the **ADDRESSES** section below.

The objection process provides an opportunity for members of the public who have participated in the planning process for the forest plan amendment to have any unresolved concerns reviewed by the Forest Service prior to a final decision by the Responsible Official. Under 36 CFR 219.53(a), objections will be accepted only from those individuals or organizations who have previously submitted substantive formal comments related to this amendment of the Tongass Forest Plan during the opportunities for public comment provided for this amendment. Objections must be based on previously submitted substantive comments attributed to the objector, unless the objection concerns an issue that arose after the opportunities for public comment. (36 CFR 219.53(a)). In addition, objections must meet the content requirements of 36 CFR 219.54(c), which can be found in **SUPPLEMENTARY INFORMATION.**

All objections are open to public inspection and will be published in the newspapers of record and posted to the Forest Service Web site (*http://www.fs.usda.gov/goto/R10/Tongass/PlanAmend*).

DATES: The period for objections begins upon publication of this notice in the newspapers of record and ends 60 days thereafter.

ADDRESSES: Objections must be submitted to one of the addresses below:

1. *Postal Delivery:* USDA Forest Service, Alaska Region; Attn: Tongass Objections; P.O. Box 21628; Juneau, AK 99802–1628.
2. *Express, Messenger, or Hand Delivery:* USDA Forest Service, Alaska Region; Attn: Tongass Objections; 709 W. 9th Street; Juneau, AK 99801–1807.
3. *Electronically Filed:* Email; *objections-alaska-regional-office@fs.fed.us;* Fax: (907) 586–7840.

FOR INFORMATION CONTACT: Susan Howle, Plan Amendment Project Manager, Tongass National Forest, Federal Building Ketchikan, AK, 99901–6591, (907) 228–6340, or *showle@fs.fed.us*

SUPPLEMENTARY INFORMATION: The office business hours for those submitting hand-delivered objections are 8:00 a.m. to 5:00 p.m. (Alaska Standard Time), Monday through Friday, except Federal holidays. Electronic objections must be submitted in a commonly used format such as an email message, plain text (.txt), rich text format (.rtf), or Microsoft Word (.doc or .docx). For electronically mailed objections, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the objection, it is the sender's responsibility to ensure timely receipt by other means. The regulations prohibit extending the length of the objection filing period.

Any objection must include the following (36 CFR 219.54(c)):

1. The objector's name and address, telephone number or email address if available. Include the identification of the lead objector, when multiple names are listed on an objection.
2. Signature or other verification of authorship upon request (a scanned signature is allowed for electronic mail);
3. The title of the plan amendment, and the name and title of the Responsible Official;
4. A description of the issues and/or parts of the plan amendment to which the objection applies;
5. A brief statement explaining the objection and suggesting how the draft plan decision may be improved. If the objector believes the plan amendment is inconsistent with law, regulation, or policy, the reasons should be included;
6. A statement that shows the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment.

Attach documents referenced in the objection except as noted at 36 CFR 219.54(b).

The objector is responsible for ensuring the timely filing of written objections. Timeliness will be determined as indicated in 36 CFR 219.56(c).

The Reviewing Officer will provide written acknowledgement of receipt of the objection, if requested by the objector.

Dated: June 21, 2016.

M. Earl Stewart,

Forest Supervisor, Tongass National Forest.

[FR Doc. 2016–15353 Filed 6–30–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a teleconference meeting on Tuesday, July 12, 2016, 3:00–3:30 p.m. Eastern Standard Time (EST) and will be open to the public. During this time, members will discuss and vote on their recommendations to develop an Innovation Encyclopedia, conduct research and pilot two Entrepreneurship & Innovation Community Exchanges, and best practices to be passed to the next Council. Approved recommendations will be presented to the Secretary in August. The meeting will take place via teleconference.

DATES: Tuesday, July 12, 2016.

Time: 3:00–3:30 p.m. Eastern Standard Time.

ADDRESSES: N/A.

Teleconference
Dial-In: 1–877–950–4778
Passcode: 4423486

FOR FURTHER INFORMATION CONTACT: Craig Buerstatte, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: *NACIE@doc.gov;* telephone: 202–482–8001; fax: 202–273–4781. Please reference ''NACIE July 12th Meeting'' in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of

Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: June 27, 2016.

Craig Buerstatte,

Deputy Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–15654 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 27 and 28, 2016, 9:00 a.m., at Qualcomm Incorporated, 5665 Morehouse Drive, Qualcomm QRC Building, San Diego, California. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, July 27

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Old Business
4. Industry Presentations
5. Comments on ECCN 5A001.J
6. Wassenaar Proposals for 2017
7. New Business

Thursday, July 28

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than July 20, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. If attending in person, forward your Name (to appear on badge), Title, Citizenship, Organization name, Organization address, Email, and Phone to Ms. Springer. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 7, 2016, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: June 21, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–15638 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating the five-year review ("Sunset Review") of the antidumping and countervailing duty ("AD/CVD") order(s) listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order(s).

DATES: Effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A-423-808	731-TA-788	Belgium	Stainless Steel Plate in Coils (3rd Review)	Jacqueline Arrowsmith (202) 482-5255
A-588-845	731-TA-800	Japan	Stainless Steel Sheet and Strip in Coils (3rd Review)	David Goldberger (202) 482-4136
A-570-803	731-TA-457	PRC	Heavy Forged Hand Tools, With or Without Hands (3rd Review)	Matthew Renkey (202) 482-2312
A-580-834	731-TA-801	Republic of Korea	Stainless Steel Sheet and Strip in Coils (3rd Review)	David Goldberger (202) 482-4136
C-580-835	701-TA-382	Republic of Korea	Stainless Steel Sheet and Strip in Coils (3rd Review)	David Goldberger (202) 482-4136
A-821-811	731-TA-811	Russia	Ammonium Nitrate (3rd Review)	David Goldberger (202) 482-4136
A-791-805	731-TA-792	South Africa	Stainless Steel Plate in Coils (3rd Review)	Jacqueline Arrowsmith (202) 482-5255
C-791-806	701-TA-379	South Africa	Stainless Steel Plate in Coils (3rd Review)	David Goldberger (202) 482-4136
A-583-830	731-TA-793	Taiwan	Stainless Steel Plate in Coils (3rd Review)	Jacqueline Arrowsmith (202) 482-5255
A-583-831	731-TA-803	Taiwan	Stainless Steel Sheet and Strip in Coils (3rd Review)	David Goldberger (202) 482-4136

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: "*http://enforcement.trade.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://*

---

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) ("*Final Rule*") (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order ("APO") to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 29, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–15722 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XE317

Notice of Intent to Prepare a Joint Environmental Impact Statement for a Programmatic Review of Harvest Actions for Salmon and Steelhead in the Columbia River Basin Related to U.S. v. Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice announces that NMFS and USFWS (together, the Services) intend to prepare a joint Environmental Impact Statement (EIS) conducting a programmatic review of harvest actions for salmon and steelhead in the action area, which is the Columbia River Basin (the Proposed Action), to inform the Services' proposed signing of the post-2017 *U.S.* v. *Oregon* Management Agreement and the Endangered Species Act (ESA) Section 7 consultation process. The Services provide this notice to advise other agencies and the public of their plans to analyze effects related to the action and to obtain suggestions and information that may be useful to the scope of issues and alternatives to include in the EIS.

DATES: Written or electronic scoping comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) on or before August 1, 2016.

ADDRESSES: You may submit comments by one of the following methods:

- *Email: USvORNEPA@noaa.gov* and/or *USvORNEPA@fws.gov.*
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349; and/or Theresa Rabot, Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy, NMFS West Coast Region, telephone: 206–526–4323, email: *peggy.mundy@noaa.gov;* or Mark Bagdovitz, USFWS, Pacific Region, telephone: 503–736–4711, email: *mark_bagdovitz@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The States of Oregon, Washington, and Idaho; the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation (collectively, the Columbia River Treaty Tribes); the Shoshone-Bannock Tribes; and the United States (as represented by the Bureau of Indian Affairs and the Services) (hereafter "Parties"), are parties to *U.S.* v. *Oregon,* Civ. No. 68–513–KI, (D. Or.). A management agreement for managing and regulating fisheries in the Columbia River Basin, entered as a court order in 2008, expires December 31, 2017. The Parties are negotiating a new agreement that would take effect when the existing agreement expires. The new agreement would include a list of hatchery programs with stipulated production levels, and a list of Tribal and non-Tribal salmonid fisheries in the Columbia River Basin, including designated off-channel sites, which are intended to: (1) Ensure fair sharing of harvestable fish between tribal and non-tribal fisheries in accordance with Treaty fishing rights standards and *U.S.* v. *Oregon,* and (2) be responsive to the needs of ESA-listed species. While the agreement includes a hatchery production component, the NEPA analysis of hatchery production within the action area has been completed, or will be supplemented, in a separate EIS that will be incorporated by reference in this EIS. Consequently, the Proposed Action in this EIS analysis focuses on harvest. Construction of new hatchery facilities to mitigate impacts to fisheries from The Dalles Dam and John Day Dam hydropower operations is being analyzed by the U.S. Army Corps of Engineers in a separate analysis, which will also be incorporated by reference into this analysis.

---

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

Environmental Impact Statement

NEPA (42 U.S.C. § 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their Proposed Actions to determine if the actions may significantly affect the human environment. The Services have determined that an EIS should be prepared under NEPA for the purpose of informing the Services' proposed signing of the new agreement. The information and analysis in the EIS will help to inform the subsequent ESA Section 7 consultation on the new agreement. The Services will prepare the EIS as joint lead agencies (40 CFR §§ 1501.5, 1508.16) in consultation with the Treaty Tribes pursuant to the Federal trust responsibility, Secretarial Order 3206, and Executive Order 13175. We will prepare an EIS in accordance with NEPA requirements, as amended (40 U.S. C. § 4321 *et seq.*); NEPA implementing regulations (40 CFR §§ 1500–1508); and other Federal laws, regulations, and policies.

The Services' purpose and need for the Proposed Action is three-fold: (1) To meet the Federal government's tribal treaty rights and trust and fiduciary responsibilities; (2) to support fishing opportunities to the states of Oregon, Washington, and Idaho, and the tribes; and (3) to work collaboratively with co-managers to protect and conserve ESA-listed and non-listed species.

Development of Initial Alternatives

The Services have preliminarily identified the following six alternatives for the public to consider. The preferred alternative will be developed to reflect a policy direction that would be compatible with the Purpose and Need indicated above.

No-action Alternative (status quo): Under this alternative, the Services would not sign a new agreement, and the parties would continue to manage salmonid fisheries in the Columbia River consistent with the terms of the 2008–2017 agreement. A No-action Alternative is required in the full range of analyzed alternatives.

Abundance-based Management Alternative: Under this alternative, the Services would sign a new agreement with the other parties, and salmonid fisheries in the Columbia River would be managed under an abundance-based management framework.

Fixed Exploitation Rate Management Alternative: Under this alternative, the Services would sign a new agreement with the other parties, and salmonid fisheries in the Columbia River would be managed under a fixed exploitation rate management framework.

Escapement-based Management Alternative: Under this alternative, the Services would sign a new agreement with the other parties, and salmonid fisheries in the Columbia River would be managed under an escapement-based management framework.

Fixed Effort-based Management Alternative: Under this alternative, the Services would sign a new agreement with the other parties, and salmonid fisheries in the Columbia River would be managed under a fixed effort management framework.

No Fisheries Alternative: Under this alternative, the Services would sign a new agreement with the other parties; however, the parties would decide that salmonid fisheries would not be allowed in the Columbia River. Although this alternative does not meet the purpose and need for the Proposed Action, it is included to provide a full range of alternatives for analysis.

Request for Comments

The Services request data, comments, pertinent information, or suggestions from the public, other concerned governmental agencies, the scientific community, tribes, the business community, or any other interested party regarding the Proposed Action discussed in this notice. We will consider all comments we receive in complying with the requirements of NEPA. We particularly seek specific comments concerning:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternative could have on endangered and threatened species, and other non-ESA-listed species and their habitats;

(2) Other reasonable alternatives (in addition to the initial alternatives presented in this notice), and their associated effects;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed actions;

(4) Other plans or projects that might be relevant to this project.

The EIS will analyze the effects that the various alternatives would have on salmon and steelhead and other fish species in the Columbia River Basin as well as the other aspects of the human environment, including but not limited to, water quality, habitat, wildlife (ESA-listed and non-ESA-listed), vegetation, socioeconomics (including fishery dependent communities and culture and economic impacts), environmental justice, cultural resources, transportation, and the cumulative impacts of the alternatives.

Authority: 42 U.S.C. 4321 *et seq.*

Dated: June 27, 2016.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service, Protected Resources.

Dated: June 22, 2016.

Robyn Thorson,

Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–15688 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–22–P; 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE700

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated three Resource Management Plans (RMPs) submitted to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The RMPs specify the propagation of three species of salmon in the Dungeness River watershed of Washington State. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has

determined pursuant to Limit 6 of the ESA 4(d) Rule for salmon and steelhead that implementing and enforcing the plans will not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook salmon and Puget Sound steelhead.

DATES: The final determination on the take limit was made on June 10, 2016.

ADDRESSES: Written responses to the determination should be sent to NMFS Sustainable Fisheries Division, 510 Desmond Dr., Suite 103, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or email: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, Puget Sound, naturally produced and artificially propagated.

Steelhead (*O. mykiss*): Threatened, Puget Sound, naturally produced and artificially propagated.

Chum salmon (*O. keta*): Threatened, naturally produced and artificially propagated Hood Canal summer-run.

Background

The Washington Department of Fish and Wildlife (WDFW) and the Jamestown S'Klallam Tribe have submitted to NMFS RMPs for three jointly operated hatchery programs in the Dungeness River basin. The plans were submitted in January 2013, pursuant to limit 6 of the 4(d) Rule for the listed Puget Sound Chinook Salmon evolutionarily significant unit (ESU) and listed Puget Sound Steelhead distinct population segment (DPS). The plans reflect refinements of existing plans provided previously and evaluated pursuant to the 4(d) Rule. The hatchery programs release ESA-listed Chinook salmon and non-listed coho and fall-run pink salmon into the Dungeness River watershed. All three programs release fish native to the Dungeness River basin. All of the programs are currently operating.

As required by § 223.203(b)(6) of the ESA 4(d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the three plans for Dungeness River salmon hatchery programs would appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU or Puget Sound Steelhead DPS. NMFS must take comments on how the plans address the criteria in § 223.203(b)(5) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The hatchery activities described in the three RMPs are intended to conserve native, listed Dungeness River Chinook salmon and non-listed fall-run pink salmon populations, and provide coho salmon for harvest in tribal and non-Indian fisheries in the basin. The Chinook and pink salmon programs are designed to preserve, and bolster the natural spawning abundance of, the native Dungeness River populations of the species. The Chinook salmon stock released through the Dungeness River Hatchery Spring Chinook salmon program is included as part of the listed Puget Sound Chinook Salmon ESU. The Dungeness River Hatchery spring Chinook program would assist in the recovery of the listed native Dungeness Chinook salmon population. The coho salmon program is operated for harvest augmentation purposes, using broodstock derived from the native, non-listed Dungeness River coho salmon population.

The three programs would be operated in such a way as to minimize potential risks to listed natural-origin Dungeness River Chinook salmon, summer chum salmon, and steelhead populations, including interactions between hatchery and natural fish that may lead to adverse genetic effects and competition and predation. The proposed hatchery programs are consistent with the Dungeness River chapter of the Shared Strategy for Puget Sound (SSPS 2005; Ruckelshaus *et al.* 2005) and the Hood Canal Summer Chum Plan (HCCC 2005). These recovery plans were approved by NMFS to protect and restore listed Chinook and summer chum salmon populations across their range in Puget Sound (NMFS 2006; NMFS 2007).

As part of the proposed hatchery programs, monitoring and evaluation would be implemented to assess their performance in meeting population conservation or harvest augmentation objectives, and their effects on ESA-listed natural-origin Chinook salmon, summer chum salmon, and steelhead. Information gained through monitoring and evaluation will be used to assess whether the impacts of the programs on listed fish are as expected. Review of monitoring and evaluation results by NMFS and the co-managers will occur annually to evaluate whether assumptions regarding RMP effects and analysis remain valid, and whether the objectives of the RMPs are being accomplished.

The RMPs include provisions for annual reports that will assess compliance with performance standards established through the RMPs. Reporting and inclusion of new information derived from RMP research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov.*

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the plans for public review and comment on February 20, 2015 (80 FR 9260). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days.

During the public comment period, NMFS received two comment letters on the draft environmental assessment. None of the comments raised issues that required substantive modification of the environmental assessment. The comments and NMFS' detailed responses are available on the West Coast Region Web site, as an appendix to the environmental assessment. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Dungeness River salmon hatchery plans.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: June 28, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–15665 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE703

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public workshop.

SUMMARY: The North Pacific Fishery Management Council's Stock Structure and Spatial Management public workshop will meet July 21, 2016.

DATES: The public workshop will be held on Thursday, July 21, 2016, from 1 p.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Alaska Fishery Science Center, 4600 Sand Point Way NE., Building 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, July 21, 2016

The Council will be hosting a public workshop to discuss stock structure and spatial management with a specific focus on identifying additional tools to manage the Bearing Sea Aleutian Island *Blackspotted/Rougheye rockfish* complex.

The Agenda is subject to change, and the latest version will be posted, at *http://www.npfmc.org/*.

Special Accommodations

The public workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason, at (907) 271–2809, at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–15656 Filed 6–30–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 7/31/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/20/2016 (81 FR 31917–31918) and 5/27/2016 (81 FR 33665–33666), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN(s)—Product Name(s): MR 10738—Holder, Pot Lid and Utensil, Includes Shipper 20738
Mandatory for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4
Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency
Distribution: C-List

NSN(s)—Product Name(s): 6135–00–985–7846—Battery, Non-rechargeable, C, Alkaline
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH
Distribution: A-List

Services

Service Type: Contractor Operated Parts Store (COPARS)
Mandatory for: U.S. Marine Corps, Motor Transport Department, Marine Corps Air Station, Building 160, Cherry Point, NC
Mandatory Source(s) of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: Dept of the Navy, Commanding General, Camp Lejeune, NC

Service Type: Base Supply Center
Mandatory for: Defense Health Agency, Defense Health Headquarters, 7700 Arlington Boulevard, Falls Church, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Defense Health Agency (DHA), Defense Health Agency—Falls Church, Falls Church, VA

Deletions

On 5/27/2016 (81 FR 33665–33666), the Committee for Purchase From

People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): 6515–00–NSH–0004—Applicator, Disposable; 6515–00–NSH–0005—Applicator, Disposable
Mandatory Source(s) of Supply: Suburban Adult Services, Inc., Elma, NY
Contracting Activities: Department of Veterans Affairs; Defense Logistics Agency Troop Support

Service

Service Type: Custodial Service
Mandatory for: U.S. Army Reserve, Chapman USARC, Danville, IL
Mandatory Source(s) of Supply: Child-Adult Resource Services, Inc., Rockville, IN
Contracting Activity: Dept of the Army, W6QM MICC FT MCCOY (RC)

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–15691 Filed 6–30–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete products and a service previously furnished by such agencies.

DATES: Comments must be received on or before July 21, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s) 6515–01–529–1187—Nasal Trumpet with Lube
Mandatory for: 100% of the requirement of the Department of Defense
Mandatory Source(s) of Supply: Lighthouse Works, Orlando, FL
Contracting Activity: Defense Logistics Agency Troop Support
Coverage: C-List
NSN(s)—Product Name(s)
5180–00–NIB–0002—Individual Point of Capture Kit (IPOCK)
5180–00–NIB–0003—Leader Point of Capture Kit (LPOCK)
5180–00–NIB–0004—Team Evidence Collection Kit (TECK)
5180–00–NIB–0005—Platoon Evidence Collection Kit (PECK)
Mandatory for: 100% of the requirement of the U.S. Army
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Army Contracting Command, Warren, MI
Distribution: C-List

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 7520–00–NIB–1314—Rotary Cutter
Mandatory Source(s) of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 6530–00–784–4205—Strap, Patient Securing, Olive Drab, 72″
Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s):
MR 3229—Goody Hair Care Product—So Gelous Purse Brush
MR 3217—Goody Hair Care Product—Fashion Contour Barrettes
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Defense Commissary Agency

Service

Service Type: Linen Rental Service
Mandatory for: New Orleans Naval Air Station, New Orleans, LA
Mandatory Source(s) of Supply: St. Tammany Association for Retarded Citizens, Inc., Slidell, LA
Contracting Activity: Dept of the Navy, Naval Hospital, Pensacola, FL

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–15690 Filed 6–30–16; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning application instructions designed to be used for grant competitions which CNCS sponsors when appropriations are available. Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 30, 2016.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 10508B; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, 202–606–6930, or by email at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

These application instructions will be used by applicants for funding through CNCS competitions. The application is completed electronically using the Grants Member and Management web-based grants management system, or submitted via email.

Current Action

This is a new information collection that replaces multiple application information collections used in the past. The information collection will otherwise be used in the same manner as the existing applications. CNCS also seeks to continue using the current applications until the revised application is approved by OMB. The current applications are due to expire at various times in the future and will be withdrawn once the new information collection request is approved.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: CNCS Application Instructions.

OMB Number: TBD.

Agency Number: None.

Affected Public: Potential applicants.

Total Respondents: 13,200.

Frequency: Depending on the availability of appropriations.

Average Time per Response: Averages 6 hours.

Estimated Total Burden Hours: 79,200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 27, 2016.

William Schmitt,

Technology Coordinator, Office of the Chief of Program Operations.

[FR Doc. 2016–15637 Filed 6–30–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

[FE Docket No. 16–15–LNG]

Eagle LNG Partners Jacksonville LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on January 27, 2016, and supplemented on February 3, March 18, and June 1, 2016, by Eagle LNG Partners Jacksonville LLC (Eagle LNG), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) transported on both ocean-going LNG carriers, and approved ISO IMO7/TVAC–ASME LNG containers to be loaded onto container vessels, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).[1] Eagle LNG seeks authorization to export the LNG in a volume equivalent to approximately 49.8 billion cubic feet of natural gas per year (Bcf/yr) (0.14 Bcf per day). Eagle LNG proposes to export the LNG from Eagle LNG's planned production, storage, and export facility to be constructed at a site on the St. Johns River in Jacksonville, Florida[2] (Facility or Jacksonville Project). Natural gas will be delivered to the facility by the local gas distribution utility, Peoples Gas, a TECO Energy Company. The Facility will export LNG via vessel to foreign markets and/or distribution to specialized domestic markets. The Facility will incorporate a truck load-out facility. Through this load-out facility, Eagle LNG will have the capability of filling ISO containers. Those containers may be transported by truck to domestic markets or to locations within the Port of Jacksonville from which ISO containers may be loaded onto container ships for delivery to both domestic and export markets. According to Eagle LNG, when fully constructed and operational, the Jacksonville Project will have the capacity to produce the natural gas equivalent of 0.14 Bcf/d of LNG per day from three trains and include a storage tank with a capacity of 12 million gallons of LNG. The Jacksonville Project has been under development since 2013 and is currently in the pre-filing phase with the Federal Energy Regulatory Commission (FERC) for the siting and construction of the Project that is expected to have its first export in the fourth quarter of 2018. Eagle LNG

---

[1] In the Application Eagle LNG also requests authorization to export LNG to any nation that currently has, or in the future may enter into, a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (FTA countries). DOE/FE will review that request for a FTA export authorization separately pursuant to NGA § 3(c), 15 U.S.C. 717b(c).

[2] On June 1, 2016, Eagle LNG supplemented the application to add several maps which show the general location of the facility at: *http://energy.gov/sites/prod/files/2016/06/f32/Third%20Supp%20to%20DOE%20Application06_01_16.pdf.*

requests authorization for a 20-year term to commence on the earlier of the date of first export or five years from the issuance of a final order granting export authorization. Eagle LNG seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b). Additional details can be found in Eagle LNG's Application, posted on the DOE/FE Web site at: *http://energy.gov/sites/prod/files/2016/02/f29/16–15–LNG.pdf.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 30, 2016.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–2627.

Edward Myers, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade, and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the following two studies examining the cumulative impacts of exporting domestically produced LNG:

- *Effect of Increased Levels of Liquefied Natural Gas on U.S. Energy Markets,* conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study);[3] and
- *The Macroeconomic Impact of Increasing U.S. LNG Exports,* conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study).[4]

Additionally, DOE will consider the following environmental document: *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014).[5] Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Due to the complexity of the issues raised by the Applicant, interested parties will be provided 60 days from the date of publication of this Notice in which to submit their comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 16–15–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 16–15–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

---

[3] The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: *https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf.*

[4] The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: *http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.*

[5] The Addendum and related documents are available at: *http://energy.gov/fe/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on June 27, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–15694 Filed 6–30–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–118–000.
Applicants: Western Antelope Blue Sky Ranch B LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Western Antelope Blue Sky Ranch B.
Filed Date: 6/21/16.
Accession Number: 20160621–5144.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: EG16–119–000.
Applicants: Antelope DSR 2, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Antelope DSR 2, LLC.
Filed Date: 6/22/16.
Accession Number: 20160622–5185.
Comments Due: 5 p.m. ET 7/13/16.

Docket Numbers: EG16–120–000.
Applicants: Western Antelope Dry Ranch LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Western Antelope Dry Ranch LLC.
Filed Date: 6/22/16.
Accession Number: 20160622–5186.
Comments Due: 5 p.m. ET 7/13/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–425–005.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO filing re: establish 6/22/16 as effective date for CSP to be effective 6/22/2016.
Filed Date: 6/22/16.
Accession Number: 20160622–5173.
Comments Due: 5 p.m. ET 6/28/16.

Docket Numbers: ER16–890–002.
Applicants: Summer Solar LLC.
Description: Compliance filing: Summer Solar LLC MBR Tariff to be effective 3/4/2016.
Filed Date: 6/22/16.
Accession Number: 20160622–5096.
Comments Due: 5 p.m. ET 7/13/16.

Docket Numbers: ER16–1969–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–06–20_Compliance filing to address NIPSCO Complaint Order to be effective 8/22/2016.
Filed Date: 6/20/16.
Accession Number: 20160620–5137.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1987–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement No. 4479, Queue Position No. AB1–055 to be effective 5/23/2016.
Filed Date: 6/22/16.
Accession Number: 20160622–5035.
Comments Due: 5 p.m. ET 7/13/16.

Docket Numbers: ER16–1988–000.
Applicants: AEP Texas Central Company.
Description: § 205(d) Rate Filing: TCC-La Paloma Energy Center IA Fourth Amend & Restated to be effective 6/6/2016.
Filed Date: 6/22/16.
Accession Number: 20160622–5044.
Comments Due: 5 p.m. ET 7/13/16.

Docket Numbers: ER16–1989–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3200 WAPA & City of Lakota, ND Interconnection Agreement to be effective 5/31/2016.
Filed Date: 6/22/16.
Accession Number: 20160622–5110.
Comments Due: 5 p.m. ET 7/13/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 22, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15597 Filed 6–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–66–000]

Midwest Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 21, 2016, the Commission issued an order in Docket No. EL16–66–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Midwest Generation, LLC's Reactive Supply tariff rate. *Midwest Generation, LLC,* 155 FERC ¶ 61,289 (2016).

The refund effective date in Docket No. EL16–66–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 22, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–15586 Filed 6–30–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–17–000]

Reactive Supply Compensation in Markets Operated by Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Workshop

As announced in the Notice of Workshop issued on March 17, 2016, and the Supplemental Notice of Workshop issued on May 19, 2016, in the above-captioned proceeding,[1] Federal Energy Regulatory Commission (Commission) staff will convene a workshop on June 30, 2016, from 12:00 p.m. (EDT) to 4:00 p.m. (EDT) in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. The workshop will be open to the public, and all interested parties are invited to attend and participate. The workshop will be led by Commission staff, and may be attended by one or more Commissioners.

The purpose of the workshop is to discuss compensation for Reactive Supply and Voltage Control (Reactive Supply) within the Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). Specifically, the workshop will explore the types of costs incurred by generators for providing Reactive Supply capability and service; whether those costs are being recovered solely as compensation for Reactive Supply or whether recovery is also through compensation for other services; and different methods by which generators receive compensation for Reactive Supply (*e.g.,* Commission-approved revenue requirements, market-wide rates, etc.). The workshop will also explore potential adjustments in compensation methods based on changes in Reactive Supply capability and potential mechanisms to prevent overcompensation for Reactive Supply.

Attached to this supplemental notice is an agenda for the workshop, including Reactive Supply compensation topics to be considered for discussion at the workshop. Questions that speakers should be prepared to discuss are grouped by topic. This notice includes the list of panelists for each of the three topic areas.

Discussions at the workshop may involve issues raised in proceedings that are pending before the Commission. These proceedings include, but are not limited to:

	Docket No(s).
ISO New England Inc	ER16–946–001, ER16–1789–000
Garrison Energy Center, LLC	ER15–2735–000
Newark Energy Center, LLC	ER15–1706–001, EL15–97–000
Scrubgrass Generating Company, L.P	ER15–2254–000, ER15–2254–001
CPV Shore, LLC	ER15–2589–000, ER15–2589–001, EL16–4–000, EL16–4–001
C.P. Crane LLC	ER16–259–000, ER16–332–000, EL16–21–000
GenOn Energy Management, LLC	ER15–2571–000, ER15–2572–000, ER15–2573–000
NRG Wholesale Generation LP	ER16–413–000, ER04–1164–001, EL16–28–000
Talen Energy Marketing, LLC	ER16–277–000, ER16–277–001, ER16–277–002, ER16–277–003, EL16–44–000, EL16–44–001, ER08–1462–001, EL16–32–000, ER16–1456–000
Constellation Power Source Generation, LLC	ER16–746–001, EL16–57–000
New Covert Generating Company, LLC	ER16–1226–000
Panda Liberty LLC	ER16–1256–001
Roundtop Energy LLC	ER16–1004–000, EL16–51–000
Beaver Dam Energy LLC	ER16–1032–000, EL16–51–000
FirstEnergy Solutions Corp	ER15–1510–000, ER15–1510–001
Duke Energy Indiana, Inc	ER16–200–000, ER16–201–000, ER16–200–002
Wabash Valley Power Association, Inc	ER16–435–001, ER16–444–001
Consumers Energy Company	ER16–1058–000, EL16–56–000
MidAmerican Energy Company	ER16–1062–000, EL16–59–000
Indiana Municipal Power Agency	EL16–14–000
BIF III Holtwood LLC	ER16–1530–000
Seward Generation, LLC	ER16–1344–000
Northampton Generating Company, L.P	ER13–1431–001, EL16–65–000
Entergy Louisiana, LLC	ER16–1832–000
LWP Lessee, LLC	ER16–1923–000
Midcontinent Independent System Operator, Inc	EL16–61–000
NRG Power Midwest, LP	ER16–1443–000; EL16–72–000
Panda Patriot LLC	ER16–1958–000
Reactive Power Requirements for Non-Synchronous Generation.	RM16–1–000
Midwest Generation, LLC	EL16–66–000

This workshop will be transcribed and webcast. Transcripts of the workshop will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700. A free webcast of this event will be available through *www.ferc.gov.* Anyone with internet access who wants to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100. Those interested in attending the workshop or viewing the webcast are encouraged to register at *https://www.ferc.gov/whats-new/registration/06-30-16-form.asp.*

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Those who wish to file written comments may do so by July 28, 2016. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659

---

[1] Reactive Supply Compensation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket No. AD16–17–000 (Mar. 17, 2016) (Notice of Workshop); Reactive Supply Compensation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket No. AD16–17–000 (May 19, 2016) (Supplemental Notice of Workshop).

(TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number AD16–17–000.

All comments will be placed in the Commission's public files and will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the eLibrary link. Enter AD16–17–000 in the docket number field to access documents. For assistance, please contact FERC Online Support.

For more information about this workshop, please contact:

Sam Wellborn (Technical Information), Office of Energy Market Regulation—East, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6288, *samuel.wellborn@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *sarah.mckinley@ferc.gov.*

Gretchen Kershaw (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8213, *gretchen.kershaw@ferc.gov.*

Dated: June 22, 2016.

Kimberly D. Bose,

Secretary.

Reactive Supply Compensation in Markets Operated by Regional Transmission Organizations and Independent System Operators Workshop

Docket No. AD16–17–000

June 30, 2016, Washington, DC

Agenda

1. Introduction and Background 12:00 p.m. to 12:15 p.m.[1]

1.1 Introduction of Commission staff
1.2 Workshop procedures
1.3 Brief overview of Commission precedent on Reactive Supply compensation

2. Costs Incurred by Synchronous Generators for Reactive Supply 12:15 p.m. to 1:15 p.m.

2.1 What costs do synchronous generators incur to install and maintain Reactive Supply capability?
2.2 Is the equipment required for synchronous generators to maintain Reactive Supply capability the same as that required to produce and deliver real power, or must additional costs be incurred to provide Reactive Supply capability?
2.3 Would synchronous generators be designed or operated differently were it not for the Reactive Supply capability requirements of their respective Interconnection Agreements or Reactive Supply reliability requirements?
2.4 What costs do synchronous generators incur in real-time to provide Reactive Supply service?
2.5 How are the costs required for synchronous generators to maintain Reactive Supply capability and to provide Reactive Supply service recovered?

Panelists:

- Dennis Bethel, Bethel Electric Rate Consulting, LLC
- Brook Knodel, Mott MacDonald
- Robert O'Connell, Main Line Electricity Market Consultants, LLC, on behalf of Panda Power Funds
- Jason Sine, PSEG Services Corporation

3. Costs Incurred by Non-Synchronous Generators for Reactive Supply 1:15 p.m. to 2:15 p.m.

3.1 What costs do non-synchronous generators incur to install and maintain Reactive Supply capability?
3.2 Is the equipment required for non-synchronous generators to maintain Reactive Supply capability the same as that required to produce and deliver real power, or must additional costs be incurred to provide Reactive Supply capability?
3.3 Would non-synchronous generators be designed or operated differently were it not for the Reactive Supply capability requirements of their respective Interconnection Agreements or Reactive Supply reliability requirements?
3.4 What costs do non-synchronous generators incur in real-time to provide Reactive Supply service?
3.5 How are the costs required for non-synchronous generators to maintain Reactive Supply capability and to provide Reactive Supply service recovered?

Panelists:

- Ravi Bantu, RES America Developments Inc.
- Mason Emnett, NextEra Energy, Inc.
- Omar Martino, EDF Renewable Energy
- Nicholas Miller, GE Energy Consulting
- Robert Nelson, Siemens Wind Power

4. Compensation Methods for Reactive Supply in Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) 2:15 p.m. to 3:55 p.m.

4.1 How does each RTO and ISO currently compensate for Reactive Supply capability and Reactive Supply service?
4.2 Is compensation for Reactive Supply capability and Reactive Supply service in RTOs and ISOs commensurate with the associated costs?
4.3 How do the RTOs and ISOs monitor the availability and amount of Reactive Supply capability, and is availability and amount of Reactive Supply capability and Reactive Supply service linked to compensation?
4.4 How could RTOs and ISOs compensate for Reactive Supply based on the actual provision of Reactive Supply service?
4.5 Are there compensation mechanisms other than those currently in place that would be more commensurate with costs?
4.6 Should real power capacity compensation mechanisms (*i.e.,* centralized capacity markets and other capacity constructs in RTOs/ISOs) account for reactive power capital cost compensation, and, if so, how?
4.7 Should Reactive Supply compensation be adjusted to account for changes in Reactive Supply capability (*e.g.,* capability that has degraded or increased), and, if so, how? Should a degradation threshold be considered?

Panelists:

- Joe Bowring, Monitoring Analytics, LLC
- Michael DeSocio, New York Independent System Operator, Inc.
- Keith Johnson, California Independent System Operator Corporation
- Pallas LeeVanSchaick, Potomac Economics
- Neil Levy, King & Spalding LLP, on behalf of the Electric Power Supply Association
- Alan McBride, ISO New England Inc.
- Robert A. Weishaar, Jr., McNees Wallace & Nurick LLC, on behalf of the PJM Industrial Customer Coalition and the Coalition of MISO Transmission Customers
- Stan Williams, PJM Interconnection, L.L.C.

---

[1] All times are eastern daylight time.

6. Closing Comments and Next Steps 3:55 p.m. to 4:00 p.m.

[FR Doc. 2016–15585 Filed 6–30–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0824; FRL 9948–44–OEI]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pesticide Establishment Application, Notification of Registration and Pesticide Production Report for Pesticide-Producing and Device-Producing Establishments

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Pesticide Establishment Application, Notification of Registration and Pesticide Production Report for Pesticide-Producing and Device-Producing Establishments" (EPA ICR No. 0160.11, OMB Control No. 2070–0078) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through June 30, 2016. Public comments were previously requested via the **Federal Register** (81 FR 5749) on February 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 1, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2011–0824 to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: OECA Docket, Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4203; email: *stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(a) requires that any person who produces pesticides or pesticide devices subject to the Act must register with the Administrator of EPA the establishment in which the pesticide or the device is produced. This Section further requires that application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide/device production and sales/distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, and sold or distributed in the past year. The supporting regulations at 40 CFR part 167 provides the requirements and time schedules for submitting production information.

During January 2016, an option has been added to allow pesticide establishment producers to electronically enter and submit their establishment registration information and pesticide production information through EPA's Central Data Exchange (CDX). A supplemental explanation is detailed in Section 5(b) of the Supporting Statement.

Form Numbers: 3540–8, 3540–16.

Respondents/affected entities: Pesticide-Producing and Device-Producing Establishments.

Respondent's obligation to respond: Mandatory (40 CFR 167).

Estimated number of respondents: 14,730 (total).

Frequency of response: Annually.

Total estimated burden: 21,274 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,680,644 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 1,287 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment in the estimates of the number of respondents.

Dated: June 23, 2016.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016–15738 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0332; FRL–9947–43–OEI]

Agency Information Collection Activities; Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Application for New and Amended Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): "Application for New and Amended Pesticide Registration" (EPA ICR No. 0277.17, OMB Control No. 2070–0060). This is a proposed extension of an existing ICR, which is currently approved through June 30, 2016. EPA received comments in response to the previously provided public review opportunity issued in the **Federal Register** on June 15, 2015 (80 FR 34153), which are addressed in this ICR. With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before August 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OPP–2015–0332, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) to OMB via email to *oira_submission@omb.eop.gov.* Address comments to *OMB Desk Officer for EPA.*

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–347–8515; email address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The renewal of this information collection request will enable the EPA to collect the information needed to evaluate an application for a pesticide registration, as required under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Under FIFRA, EPA must evaluate pesticides thoroughly before they can be marketed and used in the United States, to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or "registration" which permits their distribution, sale and use according to requirements set by EPA to protect human health and the environment.

Form Numbers: EPA Forms 8570–1, 8570–4, 8570–27, 8570–34, 8570–35, 8570–36, 8570–37.

Respondents/affected entities: 1,751.

Respondent's obligation to respond: Required to obtain or retain a benefit under section 3 of FIFRA, and implementing regulations 40 CFR parts 152, 156 and 158.

Estimated number of responses: 8,203 (total).

Frequency of response: On occasion.

Total estimated burden: 1,524,893 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $108,720,767 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a net increase of 1,356,689 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The increase is the result of EPA's updating of the methodology used to estimate the paperwork burden that involves the addition of previously unaccounted for burden for study data generation; while a decrease of approximately 23,000 hours reflects EPA's receipt of fewer number of applications. These changes are an adjustment.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 23, 2016.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016–15737 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9027–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 06/20/2016 Through 06/24/2016, Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160143, Final, NMFS, FL, Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, Review Period Ends: 08/01/2016, Contact: Rick DeVictor. 727–551–5720

EIS No. 20160144, Final, BLM, CO, Dominguez-Escalante National Conservation Area Proposed Resource Management Plan, Review Period Ends: 08/01/2016, Contact: Collin Ewing 970–244–3049.

EIS No. 20160145, Final Supplement, BLM, CO, Roan Plateau Planning Area Proposed Resource Management Plan Amendment, Review Period Ends: 08/01/2016, Contact: Greg Larson 970–876–9048.

EIS No. 20160146, Final, USFS, AK, Tongass Land and Resource Management Plan Amendment, Review Period Ends: 08/01/2016, Contact: Susan Howle 907–225–3101.

EIS No. 20160147, Final, USFS, AK, Kake to Petersburg Transmission Line Intertie Project, Review Period Ends: 08/01/2016, Contact: Tom Parker 907–772–5974.

Dated: June 28, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–15709 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9948–63–OW]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The EPA's Environmental Financial Advisory Board (EFAB) will hold a public meeting on August 9–10, 2016. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation, and EPA priorities; to discuss activities, progress, and Preliminary recommendations with regard to current EFAB work projects; and to consider request for assistance from EPA offices. Environmental finance discussions and presentations are expected on, but not limited to, the following topics: Household affordability challenges; small drinking/wastewater systems; public-private partnerships; financing pre-development activities; financing operations and maintenance costs at green infrastructure sites; financing stormwater and green infrastructure programs. The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting must register, in advance, no later than Monday, July 25, 2016. Registration is required for all members of the public to ensure an expeditious security process.

DATES: The full board meeting will be held Tuesday, August 9, 2016 from 1:00 p.m.–5:00 p.m., and Wednesday, August 10, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: U.S. Environmental Protection Agency, Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Sandra Williams at (202) 564–4999 or *williams.sandra@epa.gov*, at least 10 days prior to the meeting to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2016–15727 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0658; FRL—9946–74–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (40 CFR part 60, subpart PPP and 40 CFR part 63, subpart NNN) (Renewal)" (EPA ICR No. 1160.13, OMB Control No. 2060–0114), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through June 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 1, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0658, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A and 40 CFR part 60, subpart A, as well as for the specific requirements at 40 CFR part 63, subpart NNN and 40 CFR part 60 Subpart PPP. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Facilities with wool fiberglass insulation manufacturing lines.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart PPP and 40 CFR part 63, subpart NNN).

Estimated number of respondents: 42 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 8,470 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,500,000 (per year), includes $622,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated respondent labor hours and number of responses. The decrease occurred because the number of major sources subject to 40 CFR part 63 Subpart NNN has decreased from 29 to 10 since the previous ICR.

However, there is an increase in the total O&M costs as compared to the most recently approved ICR. For Subpart PPP, the O&M cost increased because this ICR corrects the number of respondents associated with PM monitoring. For Subpart NNN, the O&M cost increased because this ICR incorporates additional testing requirements associated with the 2015 amendment.

Dated: June 23, 2016.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016–15725 Filed 6–30–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards 49

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511 (d, the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards 49, *Public-Private Partnerships: Disclosure Requirements.*

The Statement is available on the FASAB Web site at *http://www.fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, executive director, 441 G Street NW., Mail Stop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: June 27, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016–15639 Filed 6–30–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting

June 17, 2016.

The Federal Communications Commission will hold an open meeting on the subjects listed below on Friday, June 24, 2016, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	International	Title: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155). Summary: The Commission will consider a document that seeks comments on changes to streamline and increase the transparency of the Executive Branch review of applications and petitions for national security, law enforcement, foreign policy and trade policy concerns.
2	Public Safety & Homeland Security	Title: Amendment of the Emergency Alert System (PS Docket No. 15–94). Summary: The Commission will consider a document that would revise the Emergency Alert System by adding new event codes covering extreme high winds and storm surges caused by Category 3 (and greater) hurricanes.
3	Public Safety & Homeland Security and International.	Title: Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data (GN Docket No. 15–206). Summary: The Commission will consider a Report and Order to require submarine cable licensees to report communications network outages to the FCC.

* * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	Media	Title: The Los Angeles Social Justice Radio Project, Application for a Permit to Construct a New Low Power FM Station at Los Angeles, California. Summary: The Commission will consider a Memorandum Opinion and Order concerning the dismissal of an application to construct a new low power FM station in Los Angeles, California.
2	Media	Title: LPFM MX Group 37. Summary: The Commission will consider a Memorandum Opinion and Order concerning the LPFM MX Group 37 (San Francisco, CA) from the 2013 LPFM filing window.
3	Media	Title: Comparative Consideration of 3 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations. Summary: The Commission will consider a Memorandum Opinion and Order concerning three petitions for reconsideration for permits to construct new NCE FM stations.
4	Media	Title: Kingdom of God, Inc., Former Licensee of Deleted Class A Television Station DWKOG–LP, Indianapolis, IN. Summary: The Commission will consider a Memorandum Opinion and Order concerning the denial of a Petition for Reconsideration of the cancellation of the Station's license and digital construction permit, deletion of its call-sign, and dismissal of pending applications.
5	Media	Title: Royce International Broadcasting Company, Assignor, and Entercom Communications Corp. (Assignee), Application for Assignment of License of Station KUDL(FM) (formerly KWOD), Sacramento, California. Summary: The Commission will consider a Memorandum Opinion and Order concerning the Media Bureau's dismissal of a Petition for Review.
6	Media	Title: Gwendolyn May, Former Permittee of Deleted Low Power Television Station DK15CC, San Antonio, TX. Summary: The Commission will consider a Memorandum Opinion and Order concerning the denial of a Petition for Reconsideration regarding the rescission of the Video Division's grant of for application for assignment of a construction permit.
7	Media	Title: R&F Broadcasting, Inc. Licensee of Station WRFB(TV), Carolina, Puerto Rico. Summary: The Commission will consider an Order adopting a Consent Decree which resolves issues regarding potential violations of the Commission's rules and grants the license renewal application of WRFB(TV).

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–15449 Filed 6–30–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS16–07]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

Date: July 13, 2016.

Time: 10:00 a.m.

Status: Open.

Reports

Chairman

Executive Director

Delegated State Compliance Reviews

Financial Report

Action and Discussion Items

May 11, 2016 Open Session Minutes

How to Attend and Observe an ASC meeting:

If you plan to attend the ASC Meeting in person, we ask that you send an email to *meetings@asc.gov.* You may register until close of business four business days before the meeting date. You will be contacted by the Federal Reserve Law Enforcement Unit on security requirements. You will also be asked to provide a valid government-issued ID before being admitted to the Meeting. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: June 28, 2016.

James R. Park,

Executive Director.

[FR Doc. 2016–15672 Filed 6–30–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136; Docket 2016–0053; Sequence 28]

Information Collection; Commercial Item Acquisitions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions.

DATES: Submit comments on or before August 30, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0136, Commercial Item Acquisitions, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0136, Commercial Item Acquisitions". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0136, Commercial Item Acquisitions" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0136, Commercial Item Acquisitions.

Instructions: Please submit comments only and cite Information Collection 9000–0136, Commercial Item Acquisitions, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, at 202–208–4949, or email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 reformed Federal acquisition statutes to encourage and facilitate the acquisition of commercial items and services by the Federal Government. Accordingly, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include streamlined/simplified procedures for the acquisition of commercial items.

Pertinent to this information collection, FAR Provision 52.212–3, "Offeror Representations and Certifications—Commercial Items," was implemented to combine the multitude of individual provisions used in Government solicitations into a single provision for use in commercial acquisitions. The provision is among the representations and certifications that are available for completion in the System for Award Management (SAM).

B. Annual Reporting Burden

Respondents: 397,000.
Responses per Respondent: 1.46.
Total Responses: 579,620.
Hours per Response: .500.
Total Burden Hours: 289,810.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit and not-for-profit institutions.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: June 28, 2016.

Mahruba Uddowla,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–15703 Filed 6–30–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–16–0041]

Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Amyotrophic Lateral Sclerosis (ALS) Registry—Revision—Agency for Toxic Substances and Disease Registry (ATSDR)

Background and Brief Description

On October 10, 2008, President Bush signed S. 1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the ongoing effort to maintain the National ALS Registry.

First approved in 2010 for self-registration, the primary goal of the surveillance system/registry remains to obtain reliable information on the incidence and prevalence of ALS and to better describe the demographic characteristics (age, race, sex, and geographic location) of persons with ALS (PALS). Those interested in participating in the National ALS Registry must answer a series of validation questions and if determined to be eligible they can register.

The secondary goal of the surveillance system/registry is to collect additional information on potential risk factors for ALS, including, but not limited to, family history of ALS, smoking history, military service, residential history, life-time occupational exposure, home pesticide use, hobbies, hormonal and reproductive history (women only), caffeine use, trauma, health insurance, open-ended supplemental questions, and clinical signs and symptoms. After registration, participants complete as many as 16 voluntary survey modules, each taking five minutes (maximum 80 minutes). In addition, in Year 1, a disease progression survey for new registrants is completed at 0, 3, and 6 months. In Years 2 and 3, the disease progression survey is repeated at the yearly anniversary and at 6 months. For burden estimation, the number of disease progression survey responses per year has been rounded up to 3 times.

A biorepository component is being added to increase the value of the National ALS Registry to researchers. As part of registration the participant can request additional information about the biorepository and provide additional contact information. A geographically representative sample will be selected to provide specimens. There are two types of specimen collections, in-home and postmortem. The in-home collection includes blood, urine, hair and nails. The postmortem collection includes the brain, spinal cord, cerebral spinal fluid (CSF), bone, muscle, and skin.

In addition to fulfilling the two-part Congressional mandate, the Registry is designed to be a tool for ALS researchers. Now that the Registry has matured, ATSDR will make data and specimens available to researchers. They can request access to specimens, data, or both collected by the National ALS Registry for their research projects. ATSDR will review applications for scientific validity and human subjects protection and make data/specimens available to approved researchers.

ATSDR is also collaborating with ALS service organizations to conduct outreach activities through their local chapters and districts as well as on a national level. They will provide ATSDR with information on their outreach efforts in support of the Registry on a monthly basis.

There are no costs to the respondents other than their time. The total number of burden hours requested is 1,824 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Person with ALS	ALS Case Validation Questions	1,670	1	2/60
	ALS Case Registration Form	1,500	1	10/60
	Voluntary Survey Modules	750	1	80/60
	Disease Progression Survey	750	3	5/60
	ALS Biorepository Specimen Processing Form	325	1	30/60
Researchers	ALS Registry Research Application Form	36	1	30/60
	Annual Update	24	1	15/60
ALS Service Organization	Chapter/District Outreach Reporting Form	135	12	5/60
	National Office Outreach Reporting Form	2	12	20/60

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15645 Filed 6–30–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0457: Docket No. CDC–206–0058]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on Aggregate Reports for Tuberculosis Program Evaluation. The goal of the study is to allow CDC to collect and monitor indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection in an effort to eliminate Tuberculosis in the United States.

DATES: Written comments must be received on or before August 30, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0058 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (0920–0457—Exp. 9–30–2016)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC requests the extension of the Aggregate Reports for Tuberculosis Program Evaluation, previously approved under OMB No. 0920–0457 for 3-years. There are no revisions to the report forms, data definitions, or reporting instructions.

To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through the CDC Division of Tuberculosis Elimination (DTBE). These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and programmed electronic report entry, which transitioned to the National Tuberculosis Indicators Project (NTIP), a secure web-based system for program evaluation data, in 2010. No other federal agency collects this type of national tuberculosis data, and the Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and state levels of public health jurisdiction. CDC also provides respondents with technical support for the NTIP software (Electronic—100%, Use of Electronic Signatures—No). There is no cost to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Data clerks and Program Managers, electronic.	Follow-up and Treatment of Contacts to Tuberculosis Cases Form (Att 3a).	100	1	30/60	50
Program Managers, manual	Follow-up and Treatment of Contacts to Tuberculosis Cases Form (Att 3a).	18	1	30/60	9
Data clerks, (manual)	Follow-up and Treatment of Contacts to Tuberculosis Cases Form (Att 3a).	18	1	3	54
Data clerks and Program Managers, electronic.	Targeted Testing and Treatment for Latent Tuberculosis Infection (Att 3b).	100	1	30/60	50
Program Managers, (manual)	Targeted Testing and Treatment for Latent Tuberculosis Infection (Att 3b).	18	1	30/60	9
Data clerks, (manual)	Targeted Testing and Treatment for Latent Tuberculosis Infection (Att 3b).	18	1	3	54
Total					226

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15647 Filed 6–30–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16ATI; Docket No. CDC–2016–0057]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on Development of CDC's Act Against AIDS Social Marketing Campaigns Targeting Consumers. CDC is requesting approval for revision to the previously approved project to continue testing HIV/AIDS prevention and treatment messages to be included in social marketing campaigns targeting consumers.

DATES: Written comments must be received on or before August 30, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0057 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Development of CDC's Act Against AIDS Social Marketing Campaigns Targeting Consumers—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

In an effort to refocus attention on domestic HIV and AIDS, CDC launched the Act Against AIDS (AAA) initiative in 2009 with the White House and the U.S. Department of Health and Human Services. AAA is a multifaceted national communication initiative that supports reduction of HIV incidence in the U.S. through multiple, concurrent communication and education campaigns for a variety of audiences including, the general public, populations most affected by HIV and health care providers. The campaigns target consumers 18–64 years old and include the following audiences: (1) Men who have sex with men (MSM) of all races; (2) Blacks/African Americans; (3) Hispanics/Latinos; (4) Transgender individuals; (5) HIV-positive individuals; and (6) national audience of all races. All campaigns support the comprehensive HIV prevention efforts of CDC and the National HIV/AIDS Strategy (NHAS).

The goal of this study is to qualitatively test messages and materials that will be used in specific HIV social marketing campaigns under the AAA initiative that target consumers in order to increase HIV testing rates, increase HIV awareness and knowledge, challenge commonly held misperceptions about HIV, and promote HIV prevention and risk reduction. The intended use of the resulting data is for CDC to revise and/or develop timely, relevant, clear, and engaging materials for these social marketing campaigns.

Qualitative methods will be used to collect the data include focus groups, intercept interviews, and in-depth interviews. Qualitative methods provide flexible in-depth exploration of the participants' perceptions and experience; and the interviews yield descriptions in the participants' own words. Qualitative methods also allow the interviewer flexibility to pursue relevant and important issues as they arise during the discussion.

The participants will also participate in a brief 15-minute brief survey. Data collected by the brief survey will provide a source of quantitative data supplementing the qualitative data collected during the interviews. The brief survey will be administered to participants before the individual in-depth interview and focus group. The survey will collect basic background information about the participants' knowledge, attitudes and beliefs about HIV, HIV testing behaviors, risk behaviors and demographics to enable us to more fully describe the participants.

There is no cost to participants other than their time. The total estimated annualized burden hours are 2,063.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Individuals (males and females) aged 18–64.	Study screener	2338	1	2/60	78
	Exploratory—HIV Testing In-depth Interview Guide.	74	1	1	74
	Exploratory—HIV Prevention In-depth Interview Guide.	74	1	1	74
	Exploratory—HIV Communication and Awareness In-depth Interview Guide.	74	1	1	74
	Exploratory—HIV Prevention with Positives In-depth Interview Guide.	74	1	1	74
	Consumer Message Testing In-depth Interview Guide.	68	1	1	68

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
	Consumer Concept Testing In-depth Interview Guide.	68	1	1	68
	Consumer Materials Testing In-depth Interview Guide.	68	1	1	68
	Exploratory—HIV Testing Focus Group Interview Guide.	74	1	2	148
	Exploratory—HIV Prevention Focus Group Interview Guide.	74	1	2	148
	Exploratory—HIV Communication and Awareness Focus Group Interview Guide.	74	1	2	148
	Exploratory—HIV Prevention with Positives Focus Group Interview Guide.	74	1	2	148
	Consumer Concept Testing Focus Group Interview Guide.	68	1	2	136
	Consumer Message Testing Focus Group Interview Guide.	68	1	2	136
	Consumer Materials Testing Focus Group Interview Guide.	68	1	2	136
	HIV Testing Survey	250	1	15/60	63
	HIV Prevention Survey	250	1	15/60	63
	HIV Communication and Awareness Survey	250	1	15/60	63
	HIV Prevention with Positives Survey	250	1	15/60	63
	Intercept Interview Guide	700	1	20/60	233
Total					2,063

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15646 Filed 6–30–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0500]

Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled "Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry." The guidance document provides investigational new drug application (IND) sponsors with recommendations regarding IND submissions for early clinical trials with live biotherapeutic products (LBPs) in the United States. The guidance announced in this notice updates the guidance of the same title dated February 2012 (February 2012 guidance) by addressing when the label on the commercially available products(s) would be considered adequate to satisfy the purpose of the chemistry, manufacturing, and control (CMC) information requirements.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2010–D–0500 for "Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the

Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry." The guidance provides IND sponsors with recommendations regarding IND submissions for early clinical trials for LBPs in the United States, including LBPs lawfully marketed as conventional foods and dietary supplements in the United States and proposed for clinical uses regulated under section 351 of the Public Health Service (PHS) Act (42 U.S.C. 262). The guidance focuses on the CMC information that should be provided in an IND for early clinical trials evaluating LBPs. The guidance is applicable to INDs of LBPs, whether clinical trials are conducted commercially, in an academic setting, or otherwise under part 312 (21 CFR part 312).

In the **Federal Register** of February 21, 2012 (77 FR 9947), FDA announced the availability of the final guidance of the same title dated February 2012. In the **Federal Register** of March 31, 2015 (80 FR 17050), FDA published a notice requesting additional comments on the CMC information that a sponsor of an IND should provide in its IND in order to meet regulatory requirements when commercially available conventional foods or dietary supplements containing LBPs are used as investigational new drugs in early phase clinical trials. FDA received a few comments on the notice and in response to the comments, FDA is updating the February 2012 guidance by adding a section to address when the label on commercially available products will be considered adequate to satisfy the purpose of the CMC requirements for INDs under § 312.23(a)(7)(iv)(*a*)–(*b*). In addition, editorial changes were made to improve clarity. The guidance announced in this notice updates the guidance of the same title dated February 2012.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). FDA is issuing this guidance for immediate implementation in accordance with 21 CFR 10.115(g)(2) without seeking additional comments after determining that prior public participation is not feasible or appropriate. FDA notes that we already sought comments on the issues addressed by the revisions in this guidance in the **Federal Register** of March 31, 2015 under Docket No. FDA–2010–D–0500. Further delay in implementing these revisions could impede the progress of certain investigations of drug use of commercially marketed foods or dietary supplements that are of low risk and may be of benefit to the public health.

The guidance represents the current thinking of FDA on "Early Clinical Trials with Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15664 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–N–2016–1493]

Erythropoietic Protoporphyria; Scientific Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public workshop and an opportunity for public comment on Erythropoietic Protoporphyria (EPP).

The public workshop is intended to discuss how best to facilitate and expedite the development of safe and effective drug therapies to treat signs and symptoms related to EPP. FDA will provide information for, and gain perspective from, patients and patient advocacy organizations, health care providers, academic experts, and industry on disease symptoms and its impact on daily life, experience with current treatment regimens for EPP, and various aspects of clinical development of products intended to treat EPP. The input from this public workshop will help in developing topics for further discussion.

DATES: The public workshop will be held on October 24, 2016, from 10 a.m. to 4 p.m. Submit electronic or written comments to the public docket by December 24, 2016. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Participants must enter through Bldg. 1 and undergo security screening. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–N–2016–1493. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FDA will post the agenda approximately 5 days before the workshop at: *http://www.fda.gov/Drugs/NewsEvents/ucm501389.htm.*

FOR FURTHER INFORMATION CONTACT: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 240–402–6525, FAX: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Workshop Information

A. Purpose and Scope of the Workshop

FDA is announcing a public workshop and an opportunity for public comment on Erythropoietic Protoporphyria (EPP). EPP is a group of genetic disorders that is characterized by photosensitivity that often manifests as severe pain, swelling and/or burning. Treatment for EPP focuses on minimizing sun exposure. Other treatments may include dietary management, over-the-counter and prescription sunscreen, and phototherapy. The purpose of the workshop is to discuss issues that may affect the development of products for the treatments of EPP, and to provide a scientific and technical forum to consider issues related to clinical trial designs (including eligible populations and trial feasibility) and clinical trial endpoints. FDA will provide information on current review considerations for new products in the United States, and gain perspective from patients and patient advocacy organizations, health care providers, academic experts, and industry on the most significant disease symptoms and its impact on daily life and experience with current treatment regimens for EPP. The input from this public workshop will help in developing topics for further discussion.

B. Workshop Attendance and Participation

Registration: If you wish to attend this workshop, visit *https://eppscientificworkshop.eventbrite.com.* Please register by October 17, 2016. If you are unable to attend the workshop in person, you can register to view a live Webcast of the workshop. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the workshop will be based on space availability. If you need special accommodations because of a disability, please contact Meghana Chalasani (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

FDA will hold an open public comment period to give the public an opportunity to comment. Registration for open public comment will occur at the registration desk on the day of the workshop on a first-come, first-served basis.

Docket Comments: Regardless of if you attend the public workshop, you can submit electronic or written responses for consideration to the public docket (see **ADDRESSES**) by December 24, 2016. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: As soon as a transcript is available, FDA will post it at *http://www.fda.gov/Drugs/NewsEvents/ucm501389.htm.*

Dated: June 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15662 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Bioequivalence Recommendations for Paliperidone Palmitate; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry on generic paliperidone palmitate extended-release injectable suspension, entitled "Draft Guidance on Paliperidone Palmitate." The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for paliperidone palmitate extended-release injectable suspension.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 6, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for "Draft Guidance on Paliperidone Palmitate." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*. As described in that guidance, FDA adopted this process to develop and disseminate product-specific BE recommendations and to provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for generic paliperidone palmitate extended-release injectable suspension.

FDA initially approved new drug application 022264 for INVEGA SUSTENNA (paliperidone palmitate) extended-release injectable suspension in July 2009. Currently, there are no approved ANDAs for this product. In August 2011, we issued a draft guidance for industry on BE recommendations for paliperidone palmitate extended-release injectable suspension, which we subsequently revised in December 2013 and December 2015. We are now issuing a further revised draft guidance for industry on BE recommendations for generic paliperidone palmitate extended-release injectable suspension ("Draft Guidance on Paliperidone Palmitate").

In May 2013, Janssen Research and Development, LLC, manufacturer of the reference listed drug, INVEGA SUSTENNA, submitted a citizen petition requesting that FDA require that any ANDA referencing INVEGA SUSTENNA meet certain conditions related to demonstrating BE (Docket No. FDA–2013–P–0608). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the draft guidance on paliperidone palmitate in responding to the petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the design of BE studies to support ANDAs for paliperidone palmitate extended-release injectable suspension. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: June 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15663 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1504]

Recurrent Herpes Labialis: Developing Drugs for Treatment and Prevention; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Recurrent Herpes Labialis: Developing Drugs for Treatment and Prevention." The purpose of this guidance is to assist sponsors in all phases of development of treatments for recurrent herpes labialis. The guidance also addresses prevention of recurrent herpes labialis. The guidance outlines the types of nonclinical studies and clinical trials recommended throughout the drug development process to support approval of antiviral drug products for the treatment or prevention of recurrent herpes labialis.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. [Docket No. FDA–2016–D–1504] for "Recurrent Herpes Labialis: Developing Drugs for Treatment and Prevention.". Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Regina Alivisatos, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Recurrent Herpes Labialis: Developing Drugs for Treatment and Prevention." This guidance addresses nonclinical development, early phases of clinical development, phase 3 trial considerations, and safety considerations in the development of antiviral drug products used to treat or prevent recurrent herpes labialis lesions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on developing drugs for the treatment and prevention of recurrent herpes labialis. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15698 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1692]

Elemental Impurities in Drug Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Elemental Impurities in Drug Products." This draft guidance provides recommendations regarding the control of elemental impurities of human drug products marketed in the United States consistent with implementation of International Council for Harmonisation (ICH) guidance for industry "Q3D Elemental Impurities." This draft guidance will also assist manufacturers of compendial drug products in responding to the issuance of the United States Pharmacopeia (USP) requirement for the control of elemental impurities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 30, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1692 for Elemental Impurities in Drug Products. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Kauffman, Center for Drug Evaluation and Research (HFD–920), Food and Drug Administration, 645 S. Newstead Ave., St. Louis, MO 63110, 314–539–2168; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Elemental Impurities in Drug Products." This draft guidance provides recommendations regarding the control of elemental impurities of human drug products marketed in the United States consistent with implementation of ICH Q3D. The draft guidance will also assist manufacturers of compendial drug products in responding to the issuance of the USP requirement for the control of elemental impurities.

USP introduced new limits and analytical procedures for elemental impurities in General Chapters Elemental Impurities—Limits and Elemental Impurities—Procedures. Their primary goals are to (1) set limits for acceptable levels of elemental impurities in finished drug products, and (2) update the methodology used to test for elemental impurities in drug products to include modern analytical procedures. ICH Q3D contains recommendations for manufacturers of human drugs and biologics on applying a risk-based approach to control elemental impurities and permitted daily exposure. USP worked closely with ICH to align its new General Chapters with ICH Q3D.

Because elemental impurities pose toxicological concerns and do not provide any therapeutic benefit to the patient, their levels in drug products should be controlled within acceptable limits. In general, FDA recommends that the manufacturer of any U.S. marketed drug product follow ICH Q3D recommendations to establish appropriate procedures for identifying and controlling elemental impurities in the drug product based on risk assessment and product-specific considerations, unless the drug product must comply with USP–NF requirements. This draft guidance outlines approaches for implementation of USP, and ICH Q3D in new and existing products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on elemental impurities in drug products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 for submitting NDAs and ANDAs, including supplemental applications and annual reports, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 211 and part 212 (CGMPs) have been approved under OMB control numbers 0910–0139 and 0910–0667.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: June 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15704 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1662]

Vulvovaginal Candidiasis: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Vulvovaginal Candidiasis: Developing Drugs for Treatment." The purpose of this guidance is to assist sponsors in the clinical development of drugs for the treatment of uncomplicated vulvovaginal candidiasis (VVC).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1662 for "Vulvovaginal Candidiasis: Developing Drugs for Treatment; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Shrimant Mishra, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6382, Silver Spring, MD 20993–0002, 301–796–1400.

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Vulvovaginal Candidiasis: Developing Drugs for Treatment." The purpose of this guidance is to assist sponsors in the development of drugs for the treatment of uncomplicated VVC.

This guidance helps define enrollment criteria for VVC trials, and recommends that such trials be superiority trials against placebo or active control. The recommended efficacy endpoint is resolution of clinical signs and symptoms. In addition, this guidance reflects recent developments in scientific information that pertain to drugs being developed for the treatment of VVC.

Issuance of this guidance fulfills a portion of the requirements of Title VIII, section 804, of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), which requires FDA to review and, as appropriate, revise not fewer than three guidance documents per year for the conduct of clinical trials with respect to antibacterial and antifungal drugs. In 1998, FDA published a draft guidance entitled "Vulvovaginal Candidiasis: Developing Antimicrobial Drugs for Treatment" (the 1998 draft guidance). In a **Federal Register** notice dated August 7, 2013 (78 FR 48175), FDA announced an initiative in the Center for Drug Evaluation and Research involving the review of draft guidance documents issued before 2010 to determine their status and to decide whether those guidances should be withdrawn, revised, or finalized with only minor changes. In the August 2013 **Federal Register** notice, FDA announced that the 1998 draft guidance, as well as other draft guidances, was being withdrawn because new information, scientific developments, and emerging technologies required a revision. FDA is now issuing a new draft guidance that revises the recommendations in the 1998 draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15661 Filed 6–30–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice advises the public of the published lists of all geographic areas, population groups, and facilities designated as primary medical care, mental health, and dental health professional shortage areas (HPSAs) as of May 13, 2016, available on the Health Resources and Services Administration (HRSA) Web site at *http://www.hrsa.gov/shortage/*. HPSAs are designated or withdrawn by the Secretary of Health and Human Services (HHS) under the authority of section 332 of the Public Health Service (PHS) Act and 42 CFR part 5.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the HPSA designations listed on the HRSA Web site below should be submitted to Kae Brickerd, Ph.D., Director, Shortage Designation Branch, Division of Policy and Shortage Designation, Bureau of Health Workforce (BHW), HRSA, Mail Stop 11SWH03, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 594–5168 or *KBrickerd@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 332 of the PHS Act, 42 U.S.C. 254e, provides that the Secretary of HHS shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. Section 332 further requires that the Secretary annually publish a list of the designated geographic areas, population groups, and facilities. HPSAs are to be reviewed at least annually and revised as necessary. HRSA's BHW has the responsibility for designating and updating HPSAs.

Public or private nonprofit entities are eligible to apply for assignment of National Health Service Corps (NHSC) personnel to provide primary care, mental, or dental health services in or to these HPSAs. NHSC health professionals with a service obligation may enter into service agreements to serve only in federally designated HPSAs. Entities with clinical training sites located in HPSAs are eligible to receive priority for certain residency training program grants administered by BHW. Many other federal programs also utilize HPSA designations. For example, under authorities administered by the Centers for Medicare & Medicaid Services, certain qualified providers in geographic area HPSAs are eligible for increased levels of Medicare reimbursement.

Development of the Designation and Withdrawal Lists

Criteria for designating HPSAs were published as final regulations (42 CFR part 5) in 1980. Criteria then were defined for each of seven health professional types (primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary care). The criteria for correctional facility HPSAs were revised and published on March 2, 1989 (54 FR 8735). The criteria for psychiatric HPSAs were expanded to mental health HPSAs on January 22, 1992 (57 FR 2473). Currently funded PHS Act programs use only the primary medical care, mental health, or dental HPSA designations.

Individual requests for designation or withdrawal of a particular geographic area, population group, or a facility as a HPSA are received and reviewed continuously by BHW. The majority of the requests come from the Primary Care Offices (PCO) in the State Health Departments, who have access to the on-line application and review system. Requests that come from other sources are referred to the PCOs for their review and concurrence. In addition, interested parties, including the Governor, the State Primary Care Association and state professional associations are notified of each request submitted for their comments and recommendations.

Recommendations for possible additions, continuations, revisions, or withdrawals from a HPSA list are reviewed by BHW, and the review findings are provided by letter to the agency or individual requesting action or providing data, with copies to other interested organizations and individuals. These letters constitute the official notice of designation as a HPSA, rejection of recommendations for HPSA designation, revision of a HPSA designation, and/or advance notice of pending withdrawals from the HPSA list. Designations (or revisions of designations) are effective as of the date on the notification letter from BHW. Proposed withdrawals become effective only after interested parties in the area affected have been afforded the opportunity to submit additional information to BHW in support of its continued or revised designation. If no new data are submitted, or if BHW review confirms the proposed withdrawal, the withdrawal becomes effective upon publication of the lists of designated HPSAs in the **Federal Register**. In addition, lists of HPSAs are updated daily on the HRSA Web site, *http://www.hrsa.gov/shortage/,* so that interested parties can access the most accurate and timely information.

Publication and Format of Lists

Due to the large volume of designations, a printed version of the list is no longer distributed. This notice serves to inform the public of the availability of the complete listings of designated HPSAs on the HRSA Web site. The three lists (primary medical care, mental health, and dental) of designated HPSAs are available at a link on the HRSA Web site at *http://www.hrsa.gov/shortage/* and include a snapshot of all geographic areas, population groups, and facilities that were designated HPSAs as of May 13, 2016. This notice incorporates the most recent annual reviews of designated HPSAs and supersedes the HPSA lists published in the **Federal Register** on July 1, 2015 (**Federal Register**/Vol. 80, No. 126/Wednesday, July 1, 2015/ Notices 37637). The lists also include automatic facility HPSAs, designated as a result of the Health Care Safety Net Amendments of 2002 (Pub. L. 107–251), not subject to update requirements. Each list of designated HPSAs (primary medical care, mental health, and dental) is arranged by state. Within each state, the list is presented by county. If only a portion (or portions) of a county is (are) designated, or if the county is part of a larger designated service area, or if a population group residing in the county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name. Counties that have a whole county geographic HPSA are indicated by the "Entire county HPSA" notation following the county name. Further details on the snapshot of HPSAs listed can be found on the HRSA Web site: *http://www.hrsa.gov/shortage/.*

In addition to the specific listings included in this notice, all Indian Tribes that meet the definition of such Tribes in the Indian Health Care Improvement Act of 1976, 25 U.S.C. 1603(d), are automatically designated as population groups with primary medical care and dental health professional shortages. The Health Care Safety Net Amendments of 2002 also made the following entities eligible for automatic facility HPSA designations: All federally qualified health centers (FQHCs) and rural health clinics that offer services regardless of ability to pay. These entities include: FQHCs funded under section 330 of the PHS Act, FQHC Look-Alikes, and Tribal and urban Indian clinics operating under the Indian Self-Determination and Education Act of 1975 (25 U.S.C. 450) or the Indian Health Care Improvement Act. Many, but not all, of these entities are included on this listing. Exclusion from this list does not exclude them from HPSA designation; any facilities eligible for automatic designation will be included in the HRSA Data Warehouse list of HPSAs as they are identified.

Future Updates of Lists of Designated HPSAs

The lists of HPSAs at *http://www.hrsa.gov/shortage/* consist of all those that were designated as of May 13, 2016. It should be noted that HPSAs are currently updated on an ongoing basis based on the identification of new areas, population groups, facilities, and sites that meet the eligibility criteria or that no longer meet eligibility criteria and/or are being replaced by another type of designation. As such, additional HPSAs may have been designated by letter since that date. The appropriate agencies and individuals have been or will be notified of these actions by letter. These newly designated HPSAs will be included in the next publication of the HPSA list and are currently included in the daily updates posted on the HRSA Web site at *http://www.hrsa.gov/shortage/find.html.*

Any designated HPSA listed on the HRSA Web site is subject to withdrawal from designation if new information received and confirmed by HRSA indicates that the relevant data for the area involved have significantly changed since its designation. The effective date of such a withdrawal will be the next publication of a notice regarding this list in the **Federal Register**.

All requests for new designations, updates, or withdrawals should be based on the relevant criteria in regulations published at 42 CFR part 5.

Electronic Access Address

The complete list of HPSAs designated as of May 13, 2016, are available on the HRSA Web site at *http://www.hrsa.gov/shortage/.* Frequently updated information on HPSAs is also available at *http://datawarehouse.hrsa.gov.*

Dated: June 24, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–15678 Filed 6–30–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

DATES: Comments on this ICR should be received no later than August 30, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Reports Clearance Officer, 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Countermeasures Injury Compensation Program.

OMB No. 0915–0334—Extension.

Abstract: This is an extension request for OMB approval of the information collection requirements for the Countermeasures Injury Compensation Program (CICP or Program). CICP, within the Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau, HRSA, administers the compensation program specified by the Public Readiness and Emergency Preparedness Act of 2005 (PREP Act). CICP provides compensation to eligible individuals who suffer serious injuries directly caused by a covered countermeasure administered or used pursuant to a PREP Act Declaration, or to their estates and/or to certain survivors. A declaration is issued by the Secretary of the Department of Health and Humans Services (Secretary). The purpose of a declaration is to identify a disease, health condition, or a threat to health that is currently, or may in the future constitute, a public health emergency. In addition, the Secretary, through a declaration, may recommend and encourage the development, manufacturing, distribution, dispensing, and administration or use of one or more covered countermeasures to treat, prevent, or diagnose the disease, condition, or threat specified in the declaration.

To determine whether a requester is eligible for Program benefits (compensation) for the injury, CICP must review the Request for Benefits Package, which includes the Request for Benefits Form and Authorization for

Use or Disclosure of Health Information Form(s), as well as the injured countermeasure recipient's medical records and supporting documentation.

A requester who is an injured countermeasure recipient may be eligible to receive benefits for unreimbursed medical expenses and/or lost employment income. The estate of a deceased countermeasure recipient may also be eligible to receive medical benefits and/or benefits for lost employment income accrued prior to the injured countermeasure recipient's death. If death was the result of the administration or use of the countermeasure, certain survivor(s) of deceased eligible countermeasure recipients may be eligible to receive a death benefit, but not unreimbursed medical expenses or lost employment income benefits. 42 CFR 110.33. The death benefit is calculated using either the "standard calculation" or the "alternative calculation." The "standard calculation" is based on the death benefit available under the Public Safety Officers' Benefits (PSOB) Program. 42 CFR 110.82(b). The "alternative calculation" is based on the deceased countermeasure recipient's income and is only available to the recipient's dependent(s) younger than age 18 at the time of the countermeasure recipient's death. Continued approval is requested for the required information collection via the Request for Benefits Package (RFB) and for continued use of CICP's mechanisms of medical documentation and supporting documentation collection. During the eligibility review, CICP provides requesters with the opportunity to supplement their Requests for Benefits with additional medical records and supporting documentation before a final Program decision is made. CICP asks requesters to complete and sign a form indicating whether they intend to submit additional documentation prior to the final determination of their case. In addition, approval is requested for the continued use of a benefits documentation package that CICP sends to requesters who may be eligible for compensation, which includes certification forms and instructions outlining the documentation needed to determine the types and amounts of benefits. This documentation is required under 42 CFR 110.61–110.63 of CICP's implementing regulation to enable the Program to determine the types and amounts of benefits the requester may be eligible to receive. Likely Respondents: Members of the public who believe they have sustained serious physical injuries or deaths as the direct result of the administration or use of a covered countermeasure for a disease, condition, or threat that the Secretary determines either constitutes a current public health emergency, or there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. Persons who may be eligible to receive benefits from the CICP are:

(1) Injured countermeasure recipients, as described in § 110.3(n).

(2) Survivors, as described in §§ 110.3(cc) and 110.11.

(3) Estates of deceased injured countermeasure recipients, as described in § 110.10(a)(3).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Request for Benefits Form and Supporting Documentation	100	1	100	11	1,100
Authorization for Use or Disclosure of Health Information Form	100	1	100	2	200
Additional Documentation and Certification	30	1	30	.75	22.5
Benefits Package and Supporting Documentation	30	1	30	.125	3.75
Total	100		100		1,326.25

*The number 100 represents an estimate of individuals applying for Program benefits. The 4 documents are required of the same 100 individuals or subset of the 100 individuals.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–15710 Filed 6–30–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Office of AIDS Research Advisory Council was renewed for an additional two-year period on June 27, 2016.

It is determined that the Office of AIDS Research Advisory Council is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov.*

Dated: June 27, 2016.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15643 Filed 6–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Reviews—Clinical Sciences and Epidemiology.

Date: July 11, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health–NIAAA, 5635 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Fellowship Review.

Date: July 26, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Level Conference Room 508, 5635 Fishers LN, Rockville, MD 20892.

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15592 Filed 6–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Special Emphasis Panel, June 27, 2016, 11:00 a.m. to June 27, 2016, 12:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W624, Rockville, MD, 20850 which was published in the **Federal Register** on May 2, 2016, 81FR26240.

This meeting is canceled because the applications were reassigned.

Dated: June 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15591 Filed 6–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse And Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; U01 Application Review.

Date: July 13, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Targets of Low Dose Alcohol in the Brain.

Date: July 21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Conference Room 3002/3004, 5635 Fishers Lane, Rockville, MD 20892.

Contact Person: Philippe Marmillot, Ph.D., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 2017, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15593 Filed 6–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Population Assessment of Tobacco and Health (PATH) Study—Fourth Wave of Data Collection

AGENCY: National Institute of Health, HHS.

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 15, 2016, pages 22290—22291 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing or request more information on the proposed project, contact: Kevin P. Conway, Ph.D., Deputy Director, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse, 6001 Executive Boulevard, Room 5185; or call non-toll-free number (301) 443–8755; or Email your request, including your address to: *PATHprojectofficer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Population Assessment of Tobacco and Health (PATH) Study—Fourth Wave of Data Collection (NIDA), 0925–0664, expiration date 8/31/2018—REVISION—NIDA, NIH, in partnership with the Food and Drug Administration (FDA).

Need and Use of Information Collection: This is a revision request (OMB number 0925–0664, expiration date 8/31/2018) for the Population Assessment of Tobacco and Health (PATH) Study to conduct the fourth wave of data collection. The PATH Study is a large national longitudinal cohort study on tobacco use behavior and health among the U.S. household population of adults age 18 and older and youth ages 12 to 17. On an annual basis, the PATH Study conducts interviews with and collects biospecimens from adults and youth to help inform the development, implementation, and evaluation of tobacco-product regulations by FDA in meeting its mission under the Family Smoking Prevention and Tobacco Control Act (TCA) to regulate tobacco products, including tobacco-product advertising, labeling, marketing, constituents, ingredients, and additives. The longitudinal design of the PATH Study provides it with the capacity to measure and report within-person changes and between-person differences in tobacco product use behaviors and health effects within the cohort over time. These data will help to inform regulatory decisions and actions by FDA and FDA's evaluations of associations between its regulations and tobacco use behaviors and health indicators in the population.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 94,798.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
1. Household Screener	Households	48,018	1	14/60	11,204
2. Individual Screener	Adults—New adults	9,152	1	6/60	915
3. Extended Interview	Adults—New adults and Wave 1 youth respondents who age up to adult cohort at Wave 4.	10,737	1	68/60	12,169
4. Extended Interview	Adults—Adult respondents at previous wave	23,414	1	1	23,414
5. Parent Interview	Adults—Parents of new youth and parents of shadow youth who age up to youth cohort at Wave 4.	6,561	1	19/60	2,078
6. Parent Interview	Adults—Parents of youth respondents at previous wave.	8,800	1	16/60	2,347
7. Extended Interview	Youth—New youth and shadow youth who age up to youth cohort at Wave 4.	6,432	1	45/60	4,824
8. Extended Interview	Youth—Youth respondents at previous wave	8,627	1	35/60	5,032
9. Tobacco Use Form	Adults	23,133	1	5/60	1,928
10. Tobacco Use Form	Youth	10,239	1	5/60	853
11. Shadow Youth Only Screener	Households	41,207	1	5/60	3,434
12. Verification Interview	Adults	33,889	1	2/60	1,130
13. Validation Interview	Adults	301	1	4/60	20
14. Biospecimen Collection: Blood	Adults—New adults and Wave 1 youth respondents who age up to adult cohort at Wave 4.	4,832	1	18/60	1,450
15. Biospecimen Collection: Urine	Adults	18,301	1	10/60	3,050
16. Biospecimen Collection: Urine	Youth	10,239	1	10/60	1,707
17. Follow-up/Tracking Participant Information Form.	Adults	34,151	2	8/60	9,107
18. Follow-up/Tracking Participant Information Form for Youth (completed by parents).	Adults—Parents of youth respondents	15,059	2	8/60	4,016

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
19. Follow-up/Tracking Participant Information Form for sample shadow youth (completed by parents).	Adults—Parents of shadow youth	4,684	2	8/60	1,249
20. Consent for Extended Interview	Adults—New adults and Wave 1 youth respondents who age up to adult cohort at Wave 4.	13,984	1	4/60	932
21. Parent Permission and Consent for Parent Interview.	Adults—Parents of new youth and parents of Shadow youth who age up to youth cohort at Wave 4.	7,657	1	5/60	638
22. Assent for Extended Interview	Youth—New youth and shadow youth who age up to youth cohort at Wave 4.	7,657	1	3/60	383
23. Consent for Biological Samples	Adults—New adults and Wave 1 youth respondents who age up to adult cohort at Wave 4.	10,737	1	5/60	895
24. Parent permission for urine collection.	Adults—Parents of youth respondents at previous wave.	15,360	1	3/60	768
25. Assent for urine collection	Youth	15,059	1	5/60	1,255
Total		388,229	442,123		94,798

Dated: June 27, 2016.

Genevieve deAlmeida,

Project Clearance Liaison, National Institute on Drug Abuse, NIH.

[FR Doc. 2016–15644 Filed 6–30–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Network Cables and Transceivers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain transceivers imported separately and certain imported network cables containing transceivers. Based upon the facts presented, CBP has concluded in both instances that the country of origin of the merchandise is China for purposes of U.S. Government procurement.

DATES: The final determination was issued on June 14, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 14, 2016, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain network cables and transceivers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H273091, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the processing of the imported merchandise in the U.S. does not result in a substantial transformation. Therefore, the country of origin of the transceivers and of the network cables containing transceivers is China for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 14, 2016.

Joanne R. Stump,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

HQ H273091

June 14, 2016

OT:RR:CTF:VS H273091 GaK

CATEGORY: Origin

Janet C. Wallett
FCI USA LLC.
825 Old Trail Road
Etters, PA 17319

RE: U.S. Government Procurement; Country of origin of copper cables containing transceivers and of the fiber optic transceiver; Substantial Transformation

Dear Ms. Wallett:

This is in response to your letter dated January 6, 2016, requesting a final determination on behalf of FCI USA LLC (''FCI''), pursuant to subpart B of part 177 of the U.S. Customs & Border Protection (''CBP'') Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. This final determination concerns the country of origin of FCI's Copper Direct Attach Copper (''DAC'') cable—HPL500 (''Cable'') and Fiber Optic Transceivers—HPL512 (''Transceivers''). We note that as a U.S. importer, FCI is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Cable

The Cable is a copper 10 gigabit Ethernet cable containing an active or passive Twinax (twinaxial) cable assembly. The Cable is used to connect routers and switches in data centers. Each end of the Cable has a small form-factor pluggable (''SFP+''), which connects directly into a SFP+ housing. SFP+ is a compact, hot-pluggable transceiver used for telecommunication and data communications applications. SFP+ is designed to interface with a network device motherboard switch, router, media converter, or similar device and to connect that device to a fiber optic or copper networking cable. The SFP+ contains an EEPROM chip.

All of the Cable hardware components are of Chinese origin, assembled in China and imported into the U.S. The software development process starts with research, eighty percent in the U.S. and twenty percent in China. Then development of a graphical user interface, development and writing of software specifications and architecture, programming of source code, software build, and testing and validation are conducted in China. FCI states that the Cable is completely non-functional as a network accessory at the time of importation. After importation, FCI's proprietary software is downloaded onto the EEPROM chip.

Transceiver

The Transceiver is referred to as a fiber optic transmitter and receiver, and is used for photoelectric conversion. The transmitter end of the Transceiver takes in and converts the electric signal into light; then the receiver end converts the light signal into an electrical signal. Both the receiver and the transmitter ends have their own circuitry and can handle transmissions in both directions.

A Chinese origin printed circuit board assembly (''PCBA'') is imported into the U.S. and German firmware is downloaded in the U.S. The German firmware is ''compiled'' (process that converts the written program into an executable program) in the U.S. The PCBA is exported to China and built up to a Transceiver with all Chinese origin components. The manufacturing process in China also includes defining and optimizing the values of the PCBA, which is described as specific values for tuning the amplifiers and drivers for each individual PCBA. The Transceiver is imported into the U.S. In the U.S., FCI downloads the proprietary software that enables the Transceiver to function as intended. The proprietary software downloaded onto the Transceivers is developed in Germany (research, development of a graphical user interface, development and writing of software specifications and architecture, programming of source code, software build, and testing and validation).

ISSUE:

What is the country of origin of the Cable and Transceivers for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

> . . .an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR § 25.003.

In *Data General* v. *United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in ''designing and building hardware.'' In addition, the court noted that while replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and the production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments* v. *United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated: We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that confers its identity as well as defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter (''HQ'') 558868, dated February 23, 1995 (programming of SecureID Card substantially transformed the card because it gave the card its character and use as part of a security system and the programming was a permanent change that could not be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allowed it to perform certain functions that prevented piracy of software constituted substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette did not constitute substantial transformation because it did not add value, did not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards were not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

The hardware components of the Cable are all Chinese origin and assembled in China. While eighty percent of the research conducted to develop the proprietary software is done in the U.S. and twenty percent is done in China, all other development processes are conducted in China. CBP has held that the country of origin of a software was determined by the country where the object code was created, software executable files were made, source code was programmed, and testing and validation were conducted. *See* HQ H243606, dated December 4, 2013. Therefore, since the entire development and writing of software specifications, programming of source code, and software build occur in China, the country of origin of FCI's proprietary software is China.

CBP has considered several cases dealing with country of origin of electronic products that are manufactured abroad and imported into the U.S. for software download. In HQ H034843, dated May 5, 2009, CBP held that USB flash drives were products of Israel because, though the assembly process began in China, the software and firmware were developed in Israel, and the installation and customization of the firmware and software that took place in Israel made the USB flash drives functional, permitted them to execute their security features, and increased their value. In HQ H175415, dated October 4, 2011, CBP held that Ethernet switches were products of the U.S. because, though the hardware components were fully assembled into Ethernet switches in China, they were programmed with U.S.-origin operating software enabling them to interact and route within the network, and to monitor, secure, and access control of the network.

In HQ H241177, dated December 3, 2013, Ethernet switches were assembled to completion in Malaysia and then shipped to Singapore, where U.S.-origin software was downloaded onto the switches. CBP found that software downloading did not amount to programming, which involved writing, testing and implementing code necessary to make the computer function a certain way. *See also* HQ H240199, dated March 10, 2015 (notebook computer was not substantially transformed when the computer was assembled in Country A, imported into Country F, and Country D-origin BIOS was downloaded). CBP concluded in HQ H241177, that the software downloading performed in Singapore did not amount to programming and that the country of origin was Malaysia, where the last substantial transformation occurred.

In this case, the Cable is fully assembled in China and imported into the U.S., and in its imported condition, it is completely non-functional. The Chinese proprietary software enables the Cable to function as intended. Without the proprietary software, the Cable cannot function as a network device in any capacity. However, downloading does not amount to programming. *See* HQ H241177, *supra*. Here, the software is developed in China and the download occurs in the U.S. Given these facts, we find that the country where the last substantial transformation occurs is China, that is, where the major assembly processes are performed and the software was developed. The country of origin of the Cable for purposes of U.S. Government procurement is China.

The manufacturing process for the Transceivers is similar to the Cable. The Transceiver is fully assembled in China and imported into the U.S., and in its imported condition, it is completely non-functional. The German software is downloaded and enables the Transceiver to function as intended. As stated above, and in accordance with HQ H241177, downloading does not amount to programming and the Transceiver is not substantially transformed in the U.S. Given these facts, we find that the country where the last substantial transformation occurs is China, where the major assembly processes are performed. The country of origin of the Transceiver for purposes of U.S. Government procurement is China.

HOLDING:

Based on the facts in this case, we find that the last substantial transformation of the Cable and Transceiver occurs in China. As such, the Cable and Transceiver will be considered products of China for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Joanne R. Stump,
Acting Executive Director, Regulations and Rulings, Office of International Trade

[FR Doc. 2016–15692 Filed 6–30–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0032]

Agency Information Collection Activities: Application for Waiver of Grounds of Inadmissibility, Form I–690; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 30, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0032 in the subject box, the agency name and Docket ID USCIS–2006–0047. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0047;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0047 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–690; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS will use this form to determine whether applicants are eligible for admission to the United States under sections 210 and 245A of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22 responses (Form I–690) at approximately 3 hours per response; 11 responses (Supplement 1) at approximately 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 88 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,316.50.

Dated: June 24, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–15655 Filed 6–30–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0074]; [FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
36222B	Busch Gardens	79 FR 54740; September 12, 2014	September 2, 2015.
51119B	Tanganyika Wildlife Park	80 FR 33541; June 12, 2015	October 19, 2015.
70015B	Michael Braun, Smithsonian Institution Museum of Natural History.	80 FR 55868; September 17, 2015	May 5, 2016.
57032B	Tanganyika Wildlife Park	80 FR 64441; October 23, 2015	December 18, 2015.
75939B	Institute For Conservation of Tropical Environments, SUNY at Stony Brook.	81 FR 2899; January 19, 2016	May 11, 2016.
78822B	Denver Zoological Foundation	81 FR 5778; February 3, 2016	May 3, 2016.
86126B	James Mercer	81 FR 8093; February 17, 2016	April 7, 2016.
82159B	Wildlife Conservation Society	81 FR 9497; February 25, 2016	June 3, 2016.
86976B	Kenneth Morrill	81 FR; 10884; March 2, 2016	May 9, 2016.
10982A	The Austin Savanna	81 FR; 10884; March 2, 2016	May 24, 2016.
85599B	Atlanta-Fulton County Zoo dba Zoo Atlanta	81 FR 12116; March 8, 2016	May 11, 2016.
87863B	Danny Janecka	81 FR 12116; March 8, 2016	April 20, 2016.
51920A	Evan Rosenoff	81 FR 16197; March 25, 2016	May 12, 2016.
88822B	Armour Mellon	81 FR 16197; March 25, 2016	June 1, 2016.
77252B	Wildlife Conservation Society	81 FR 16197; March 25, 2016	June 3, 2016.
88755B	Matthew Duel Saulsbury	81 FR 16197; March 25, 2016	May 26, 2016.
91923B	Wayne Catto	81 FR 20666; April 8, 2016	May 26, 2016.
91319B	Aubrey Beacham	81 FR 20666; April 8, 2016	June 1, 2016.
92092B	Roger Hooten	81 FR 20666; April 8, 2016	June 1, 2016.

ENDANGERED SPECIES—Continued

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
84795B	University of Minnesota	81 FR 23745; April 22, 2016	June 3, 2016.
81432B	Auburn University	81 FR 23745; April 22, 2016	June 8, 2016.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
92150B	Silverback Films	81 FR 29889; May 13, 2016	June 21, 2016.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–15605 Filed 6–30–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0075]; [FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before *August 1, 2016.* We must receive requests for marine mammal permit public hearings, in writing, at the address shown in **ADDRESSES** by August 1, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0075.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0075; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing such viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Atlanta Fulton County Zoo, Inc., Atlanta, GA; PRT–008519

The applicant requests reissuance of their permit for scientific research with two captive-born giant pandas (*Ailuropoda melanoleuca*) and their off-spring currently held under loan agreement with the Government of China and under provision of the USFWS Giant Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, genetics, nutrition, and animal health and is a continuation of activities currently in progress. This notice covers activities conducted over a period of 5-years.

Applicant: Omar Gonzalez, Valley Center, CA; PRT–85788B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: yellow-crested cockatoo (*Cacatua sulphurea*), citron-crested cockatoo (*Cacatua sulphurea citrinocristata*), Cuban amazon (*Amazona leucocephala*), golden conure (*Guaruba guarouba*), great green macaw (*Ara ambiguus*), military macaw (*Ara militaris*), and blue-throated macaw (*Ara glaucogularis*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bryan Moyer, Albrightsville, PA; PRT–99217B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Laura Graham, Guelph, Ontario, Canada; PRT–90060B

The applicant requests a permit for take of captive-bred polar bears (*Ursus maritimus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 3-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–15604 Filed 6–30–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX13SB00C2G9100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a renewal of a currently approved information collection (1028–0107).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on November 30, 2016.

DATES: To ensure that your comments are considered, we must receive them on or before August 30, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–0107, Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Catherine Cullinane Thomas, Fort Collins Science Center, U.S. Geological Survey, 2150 Centre Ave., Fort Collins, CO 80526 (mail); 970–226–9164 (phone); or *ccullinanethomas@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal investments in ecosystem restoration projects protect Federal trusts, ensure public health and safety, and preserve and enhance essential ecosystem services. These investments also generate business activity and create jobs. The Economic Impacts of Ecosystem Restoration project aims to increase the availability of information on the costs and activities associated with ecosystem restoration, and to gauge the economic effects of these investments to local economies. The project is comprised of a series of case studies that quantify the economic impacts of restoration projects. The case studies include examples of collaboratively funded and managed projects to restore a wide range of degraded, damaged, or destroyed ecosystems. In addition to providing improved information on the economic impacts of restoration, these case studies highlight DOI restoration efforts and tell personalized stories about each project and the communities that are positively affected by restoration activities. Project methods include the collection of primary expenditure data and economic input/output modeling. Results from the first phase of case studies are available online at *https://www.fort.usgs.gov/economic-impacts-restoration* and in a USGS report titled 'Estimating the economic impacts of ecosystem restoration—methods and case studies'. The report provides a detailed description of the methods used to estimate economic impacts of case study projects and also provides suggestions, lessons learned, and trade-offs between potential analysis methods. This second phase of case studies aims to refine the survey methods and fill in some data gaps on specific types of restoration activities.

II. Data

OMB Control Number: 1028–0107.

Form Number: NA.

Title: Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems.

Type of Request: Renewal of existing information collection.

Affected Public: DOI restoration project managers and contractors working on selected case study restoration projects.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: One time only.

Estimated Total Number of Annual Responses: We expect to do up to 10 case studies per year. This will result in approximately 10 responses by project managers and approximately 30 responses by contractors, for a total of 40 responses per year. Most of the project managers are expected to be Federal employees.

Estimated Time per Response: Restoration project managers will complete a project summary survey and an expenditure survey, and will work with the USGS to coordinate contact with project contractors. It is expected that it will take project managers up to 4 hours to complete this activity. Project contractors will complete an expenditure survey. It is expected that it will take contractors no more than 1 hour to complete this activity.

Estimated Annual Burden Hours: Total estimated annual burden for this collection is no more than 70 hours per year.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

William Lellis,

Acting Associate Director, Ecosystems.

[FR Doc. 2016–15657 Filed 6–30–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000 L16100000.DT0000–16X]

Notice of Availability of the Proposed Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement for the Roan Plateau Planning Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) Amendment and Final Supplemental Environmental Impact Statement (EIS) for the Roan Plateau planning area and by this notice announces its availability.

DATES: BLM planning regulations state that any person who meets the conditions identified in the regulations may protest the BLM's Proposed RMP Amendment/Final Supplemental EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Roan Plateau Proposed RMP Amendment/Final Supplemental EIS have been sent to affected Federal, State and local government agencies and to other stakeholders. Copies of the Proposed RMP Amendment/Final Supplemental EIS are also available for public inspection at the Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652. Interested persons may also review the Proposed RMP Amendment/Final Supplemental EIS on the Internet at *www.blm.gov/co/st/en/BLM_Programs/land_use_planning/rmp/roan_plateau.html.*

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Greg Larson, Project Manager; telephone (970) 876–9048; see Colorado River Valley Field Office address above; email *glarson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM prepared the Roan Plateau Proposed RMP Amendment/Final Supplemental EIS to evaluate a range of management decisions for resources, resource uses, and special designations in the planning area. The Proposed RMP/Final Supplemental EIS also responds to a June 22, 2012, ruling by the United States District Court for the District of Colorado remanding the 2007 Roan Plateau Record of Decision. The Court set aside the 2007 Roan Plateau RMP Amendment and remanded the matter to the BLM for further action in accordance with the Court's decision. In particular, the Court found that the Final EIS was deficient insofar as it failed to adequately address the: (i) "Community Alternative" that various local governments, environmental organizations and individual members of the public recommended during the planning process leading up to the 2007 plan amendment; (ii) Cumulative air-quality impacts of the RMP Amendment decision in conjunction with anticipated oil and gas development on private lands outside the Roan Plateau planning area; and (iii) Issue of potential ozone impacts from proposed oil and gas development. Based on the Court's ruling and new information available since the BLM developed the Final EIS, the BLM determined that a new RMP Amendment and supplemental analysis under NEPA were warranted. The parties involved in the litigation regarding the 2007 plan amendment reached a settlement in November 2014. Based on that agreement, the Roan Plateau Proposed RMP Amendment/Final Supplemental EIS includes an alternative that was identified in the November 2014 settlement. That "Settlement Alternative" was identified as the Proposed Alternative in the Draft Supplemental EIS.

The planning area, which is in west-central Colorado, includes approximately 73,602 acres of BLM-managed land (Federal surface, Federal mineral estate, or both). It is located primarily in Garfield County with a small portion in southern Rio Blanco County. The Roan Plateau RMP Amendment proposes to amend the management decisions in the Glenwood Springs and White River RMPs as they relate to the planning area.

The Roan Plateau RMP Amendment process began originally with scoping in 2000. The BLM published the Draft EIS in November 2004 and the Final EIS in August 2006. The BLM then issued two Records of Decision, one in June 2007 and a second, pertaining to Areas of Critical Environmental Concern, in March 2008. Following the District Court ruling in 2012, the BLM published a Notice of Intent to develop the Draft RMP Amendment/Supplemental EIS on January 28, 2013 (78 FR 5834), which initiated a second scoping period. The Draft RMP Amendment/Supplemental EIS was published on November 20, 2015 (80 FR 72732), and made available for public comment. The BLM held three public meetings to discuss the Draft RMP Amendment/Supplemental EIS and received approximately 50,000 comment submissions during the comment period. The BLM carefully considered those comments. The BLM made changes to the Proposed RMP Amendment/Final Supplemental EIS in response to comments received from the public and cooperating agencies, United States Fish and Wildlife Service consultation, and extensive internal BLM reviews. These changes included the addition of clarifying text and updated information, however, none of the changes constituted a substantial change in the proposed land use plan decisions or the analysis in the Draft Supplemental EIS that would require additional supplementation.

Major issues considered in the Proposed RMP Amendment/Final Supplemental EIS include fluid minerals management; social and economic impacts; riparian habitat management; recreation; and air, water, and ecological resources. The RMP also addresses decisions regarding Wild and Scenic Rivers, Areas of Critical Environmental Concern, and lands with wilderness characteristics. Decisions related to Greater Sage-Grouse management in the proposed Amendment are consistent with last year's Northwestern Colorado Greater Sage-Grouse Resource Management Plan Amendment Record of Decision.

The Proposed RMP Amendment/Final Supplemental EIS focuses on evaluating new information and new issues raised since the BLM developed the 2006 Roan Plateau Final EIS. This includes an evaluation of four alternatives including the No Action Alternative (Alternative I). Alternative II is based on the Proposed Plan from the 2006 Roan RMP Amendment/Final EIS and includes updated decisions and analysis based on new information and issues raised during the scoping period for the Supplemental EIS. Alternative III is based on the "Community Alternative" raised during the original EIS process by Rock the Earth. Alternative III was augmented with input from other Supplemental EIS scoping comments. This alternative allows oil and gas leasing throughout the planning area, but limits surface disturbance on BLM lands above the rim. Wilderness characteristics would be managed for protection in this alternative, and all eligible river segments in the planning area would be determined to be suitable for designation as Wild and Scenic Rivers. Alternative III also analyzes two proposed sub-alternatives for target shooting restrictions in an open Off-Highway Vehicle area. Alternative IV is the BLM's Proposed Alternative and is based on the terms of the 2014 Settlement Agreement. This alternative would allow for leasing at the base of the plateau (11,170 acres) and within several retained lease areas on the top of the plateau (1,830 acres). Other resource management decisions in this alternative would be similar to Alternative II.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP Amendment/Final Supplemental EIS may be found in the "Dear Reader" Letter of the Roan Plateau Proposed RMP Amendment/Final Supplemental EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy, and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov*.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–15527 Filed 6–30–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000 L16100000.DQ0000]

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Dominguez-Escalante National Conservation Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) for the Dominguez-Escalante National Conservation Area (D–E NCA) located in Mesa, Delta and Montrose counties in Colorado and by this notice is announcing its availability.

DATES: The BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP/Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the Dominguez-Escalante National Conservation Area Proposed RMP/Final EIS have been sent to affected Federal, State and local government agencies; tribal governments; and other stakeholders. Copies of the Proposed RMP/Final EIS are available for public inspection at the Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506; and the BLM's Uncompahgre Field Office at 2465 South Townsend Ave., Montrose, CO 81401. Interested persons may also review the Proposed RMP/Final EIS on the Internet at *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, NCA Manager, telephone 970–244–3049; address Grand Junction Field Office (see address above); email *dencarmp@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The D–E NCA planning area includes approximately 218,000 acres of State, private and BLM-managed lands located in Delta, Mesa and Montrose counties in western Colorado. Within the D–E NCA planning area, the BLM administers approximately 210,000 acres of Federal surface and subsurface estate. Management decisions made as a result of the RMP will apply only to the BLM-administered lands in the D–E NCA planning area. The D–E NCA was established by the Omnibus Public Lands Management Act of 2009. The D–E NCA is currently managed under the 1987 Grand Junction Record of Decision (ROD) and Approved RMP, as amended; the 1989 Uncompahgre Basin ROD and Approved RMP, as amended; and the BLM's 2010 Interim Management Policy for the D–E NCA and Dominguez Canyon Wilderness. When approved, this RMP will replace all of these existing plans for the D–E NCA planning area.

The Draft RMP and Draft EIS public comment period, which began on May 17, 2013, and ended September 23, 2013, included a 45-day extension in response to requests from the public. The total comment period encompassed 129 days.

The Proposed RMP/Final EIS describes and analyzes five management alternatives, each of which includes objectives and management actions to address management challenges and issues, including the conservation and protection of the unique and important resources that were identified as purposes of the area's designation.

Alternative A is the no action alternative and would retain the current management goals, objectives and direction specified in the 1987 Grand Junction RMP and 1989 Uncompahgre Basin RMP, where the management is consistent with the Omnibus Act.

Alternative B focuses on allowing natural processes to influence the condition of resources, which would involve placing additional restrictions on allowable uses to manage the D–E NCA. Recreation would be managed largely through Extensive Recreation Management Areas, where the BLM would commit to providing activity opportunities but not specific recreation outcomes or settings. Alternative C emphasizes active management for biological restoration and cultural resource protection. The BLM would set objectives that provide a high level of resource protection and restoration. Only two areas would be managed as Special Recreation Management Areas, with the rest of the D–E NCA not managed as recreation areas. Alternative D would also emphasize an active management approach for biological restoration and cultural resource protection, but with objectives that provide a lower level of restoration and protection for these resources as compared to Alternative C. Resource uses, particularly trail-based recreation and livestock grazing, would be emphasized. The Proposed RMP is based upon the Preferred Alternative (E) identified in the Draft. Alternative E from the draft was largely a combination of management approaches already considered under alternatives A through D. The Proposed RMP also includes changes from the draft in response to public comments and advisory council recommendations. Public comments identified opportunities to better resolve conflicts or impacts as well as identified parts of the EIS in need of greater clarity. As with the Draft Preferred Alternative, the Proposed RMP would set objectives for biological resources that are more ambitious than those in Alternative D but less ambitious than those in Alternative C. As with Alternatives C and D, a wide range of tools would be available to achieve these objectives.

The Proposed RMP would provide comprehensive, long-range decisions for the use and management of resources in the D–E NCA, focusing on the conservation and protection of the unique and important resources that were identified as purposes of the area's designation.

The Proposed RMP includes: goals, objectives, management actions, allowable use, and implementation decisions to ensure future BLM management supports the protection of two Areas of Critical Environmental Concern, four Special Recreation Management Areas, Extensive Recreation Management Areas, Wilderness Study Areas, the Old Spanish National Historic Trail, and a stream segment, Cottonwood Creek, which was found suitable for inclusion in the National Wild and Scenic River System. The following is a brief summary of the Wild and Scenic Rivers study process findings: of the 147.6 miles of 8 streams inventoried, 64.4 miles were found ineligible and 83.2 miles were found eligible; of the 83.2 eligible stream miles, 69.1 miles were determined non-suitable and 14.1 miles were determined suitable for inclusion in the National Wild and Scenic River System. Maps are included to illustrate the Proposed RMP as well as the other alternatives considered in the Final EIS.

The D–E NCA is withdrawn from all the mineral laws and BLM expects very little ground disturbance. The proposed plan alternative includes mitigation to protect soils, wildlife and habitat (*e.g.,* measures to reduce risk of disease transmission from domestic sheep to wild bighorn sheep), a national trail management corridor to protect the Old Spanish National Historic Trail, and protections relevant to the National Historic Preservation Act.

The BLM made changes to the Proposed RMP/Final EIS in response to public comment on the Draft RMP/Draft EIS in addition to cooperating agency reviews, advisory council reviews, U.S. Fish and Wildlife Service consultation, and extensive internal BLM reviews of the Proposed RMP/Final EIS. The BLM carefully considered all comments and incorporated them into the Proposed RMP as appropriate. Public comments resulted in the addition of clarifying text, but did not constitute a substantial change that would require a supplemental EIS.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the "Dear Reader" Letter of the D–E

NCA Proposed RMP/Final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov.*

Unlike land use planning decisions, implementation decisions included in this Proposed RMP/Final EIS are not subject to protest under the BLM planning regulations, but are subject to an administrative review process through appeals to the Office of Hearings and Appeals, Interior Board of Land Appeals, pursuant to 43 CFR part 4 Subpart E. Implementation decisions generally constitute the BLM's final approval allowing on-the-ground actions to proceed. Where implementation decisions are made as part of the land use planning process, they are subject to the appeals process or other administrative review as prescribed by specific resource program regulations once the BLM resolves the protests to land use planning decisions and issues an Approved RMP and ROD. The Approved RMP and ROD will, therefore, identify the implementation decisions made in the plan that may be appealed to the Office of Hearing and Appeals.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–15526 Filed 6–30–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03500.L51050000.EA0000. LVRCF1604630 241A; MO#]

Notice of Temporary Closure and Temporary Restrictions of Specific Uses on Public Lands for the Burning Man Event (Permitted Event), Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that under the authority of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office, will implement a temporary closure and temporary restrictions to protect public safety and resources on public lands within and adjacent to the Burning Man event on the Black Rock Desert playa.

DATES: The temporary closure and temporary restrictions will be in effect from August 1 to September 21, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. William Mack, Jr., Black Rock Field Office Manager, Winnemucca District, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445–2921, telephone: 775–623–1500, email: *wmack@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The temporary closure and temporary restrictions affect public lands within and adjacent to the Burning Man event permitted on the Black Rock Desert playa within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area in Pershing County, Nevada. The legal description of the affected public lands in the temporary public closure area is:

Mount Diablo Meridian, Nevada

T. 33 N., R. 24 E., unsurveyed,
  Sec. 1, that portion lying northwesterly of East Playa Road;
  Sec. 2, that portion lying northwesterly of East Playa Road;
  Sec. 3;
  Sec. 4, that portion lying southeasterly of Washoe County Road 34;
  Sec. 5;
  Sec. 8, NE¼;
  Sec. 9, N½;
  Sec. 10, N½;
  Sec. 11, that portion of the N½ lying northwesterly of East Playa Road.
T. 33½ N., R. 24 E., unsurveyed,
  Secs. 25, 26, and 27;
  Sec. 28, that portion lying easterly of Washoe County Road 34;
  Sec. 33, that portion lying easterly of Washoe County Road 34;
  Secs. 34, 35, and 36.
T. 34 N., R. 24 E., partly unsurveyed,
  Sec. 23, S½;
  Sec. 24, S½;
  Secs. 25 and 26;
  Sec. 27, E½NE¼, E½SW¼, SE¼;
  Sec. 33, NE¼NE¼, S½NE¼, that portion of the SW¼ lying northeasterly of Washoe County Road 34, SE¼;
  Secs. 34, 35, and 36.
T. 33 N., R. 25 E.,
  Sec. 4, that portion lying northwesterly of East Playa Road.
T. 34 N., R. 25 E., unsurveyed,
  Sec. 16, S½;
  Sec. 21;
  Sec. 22, W½NW¼, SW¼;
  Sec. 27, W½;
  Sec. 28;
  Sec. 33, that portion lying northwesterly of East Playa Road;
  Sec. 34, that portion of the W½ lying northwesterly of East Playa Road.

The temporary closure area comprises approximately 14,153 acres in Pershing County, Nevada.

The public closure is necessary for the period of time from August 1 through September 21, 2016, because of the Burning Man event activities in the area, starting with fencing the site perimeter, final setup, the actual event (August 28 through September 5), initial phases of cleanup, and concluding with final site cleanup.

The public closure area comprises about 13 percent of the Black Rock Desert playa. Public access to other areas of the playa will remain open and the other 87 percent of the playa outside the temporary closure area will remain open to dispersed casual use.

The event area is contained within the temporary closure area. The event area is defined as the portion of the temporary closure area (1) entirely contained within the event perimeter fence, including 50 feet from the outside of the event perimeter fence; and (2) within 25 feet from the outside edge of the event access road; and includes the entirety of the aircraft parking area outside the event perimeter fence.

The temporary closure and temporary restrictions are necessary to provide a safe environment for the participants of the permitted event and for members of the public visiting the Black Rock Desert, and to protect public land resources by addressing law enforcement and public safety concerns associated with the event. The event is expected to attract approximately

70,000 paid participants to a remote rural area, more than 90 miles from urban infrastructure and support, including public safety, transportation, and communication services. During the event, Black Rock City, the temporary city associated with the event, becomes one of the largest population areas in Nevada. This event is authorized on public land under Special Recreation Permit #NVW03500–16–01.

The permitted event takes place within Pershing County, a rural county with a small population and a small Sheriff's Department. The temporary closure and temporary restrictions are necessary to enable BLM law enforcement personnel to provide for public safety and to protect the public lands, as well as to support and assist state and local agencies with enforcement of existing laws.

A temporary closure and temporary restrictions order, under the authority of 43 CFR 8364.1, is appropriate for a single event. A temporary closure and temporary restrictions order is specifically tailored to the timeframe that is necessary to provide a safe environment for the public and for participants at the Burning Man event, and to protect public land resources while avoiding imposing restrictions that may not be necessary in the area during the remainder of the year.

The BLM will post information signs and maps about the temporary closure and temporary restrictions at main entry points around the playa, at the BLM Winnemucca District Office, at the Nevada State Office, at the Black Rock Visitor Center and on the BLM's Web site: *www.blm.gov/nv/st/en/fo/wfo.html*.

In addition to the Nevada Collateral Forfeiture and Bail Schedule as authorized by the United States District Court, District of Nevada and under the authority of Section 303(a) of FLPMA, 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce a temporary public closure and the following temporary restrictions will apply within and adjacent to the Burning Man event on the Black Rock Desert playa from August 1 through September 21, 2016:

Temporary Restrictions

(a) Environmental Resource Management and Protection

(1) No person may deface, disturb, remove, or destroy any natural object.

(2) Fires/Campfires: The ignition of fires on the surface of the Black Rock playa without a burn blanket or burn pan is prohibited. Campfires may only be burned in containers that are stably elevated above the playa/ground surface and in a manner that do not pose a risk of fire debris falling onto the playa/ground surface. Plastic and other nonflammable materials may not be burned in campfires. The ignition of fires other than a campfire is prohibited. This restriction does not apply to event-sanctioned and regulated art burns during the event.

(3) Fireworks: The use, sale, or possession of personal fireworks is prohibited except for uses of fireworks approved by the permit holder and used as part of a Burning Man-sanctioned art burn event.

(4) Grey and Black Water Discharge: The discharge and dumping of grey water and black water onto the playa/ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected. Black water is defined as waste water containing feces, urine, and/or flush water.

(5) Human Waste: The depositing of human waste (liquid and/or solid) on the playa/ground surface is prohibited.

(6) Trash: The discharge of any and all trash/litter (Matter Out Of Place (MOOP)) onto the playa/ground surface is prohibited. All event participants must pack out and properly dispose of all trash at an appropriate disposal facility off the playa.

(7) Hazardous Materials: The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the playa/ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure.

(8) Fuel Storage: All fuel must be stored in a designated fuel storage area located at least ten feet away from any flammable materials, including vehicles and camping trailers. Fuel storage areas must be provided with shade to prevent fuel containers from bloating, leaking, or spilling. The storage of more than 110 gallons of fuel in a single camp is prohibited. Storage areas for over 20 gallons of fuel must include a secondary containment measure capable of holding 110 percent of the fuel being stored to prevent leaks and spills onto the playa/ground surface. Storage areas for less than 20 gallons of fuel must include a tarp, plywood, or other measure to prevent leaks and spills onto the playa/ground surface.

(9) Water Discharge: The unauthorized dumping or discharge of water onto the playa/ground surface, onto city streets and/or other public areas, or onto camp electric systems in a manner that creates a hazard or nuisance is prohibited. This provision does not prohibit the use of water trucks contracted by the event organizer to provide dust abatement measures.

(b) Commercial Activities

In accordance with Handbook H–2930–1 Chapter 1–C. Vending and the 2016 Special Recreation Permit Stipulation for the permitted event, ALL venders and air carrier services must provide proof of authorization to operate at the event issued by the permitting agency and/or the permit holder upon request. Failure to provide such authorization would potentially result in eviction from the event.

(c) Aircraft Landing

The public closure area is closed to aircraft landing, taking off, and taxiing. Aircraft is defined in Title 18, U.S.C., section 31(a)(1) and includes lighter-than-air craft and ultra-light craft. The following exceptions apply:

(1) All aircraft operations, including ultra-light and helicopter landings and takeoffs will occur at the designated 88NV Black Rock City Airport landing strips and areas defined by airport management. All takeoffs and landings will occur only during the hours of operation of the airport as described in the Burning Man Operating Plan. All pilots that use the Black Rock City Airport must agree to and abide by the published airport rules and regulations;

(2) Only helicopters providing emergency medical services may land at the designated Emergency Medical Services helicopter pad or at other locations when required for medical incidents. The BLM authorized officer or his/her delegated representative may approve other helicopter landings and takeoffs when deemed necessary for the benefit of the law enforcement operation; and

(3) Landings or takeoffs of lighter-than-air craft previously approved by the BLM authorized officer may occur.

(d) Alcohol/Prohibited Substance

(1) Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited.

(2) Possession of alcohol by minors: *The following are prohibited:*

(i) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands; and

(ii) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

(3) Operation of a motor vehicle while under the influence of alcohol, narcotics, or dangerous drugs:

(i) Title 43 CFR 8341.1(f)(3) prohibits the operation of an off-road motor vehicle on public land while under the influence of alcohol, narcotics, or dangerous drugs.

(ii) In addition to the prohibition found at 43 CFR 8341.1(f)(3), it is prohibited for any person to operate or be in actual physical control of a motor vehicle while:

(A) The operator is under the combined influence of alcohol, a drug, or drugs to a degree that renders the operator incapable of safe operation of that vehicle; or

(B) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

(C) The amount of a prohibited substance in the operator's urine or blood is equal to or greater than the following nanograms per milliliter (ng/ml):

(1) Amphetamine: Urine, 500 ng/ml; blood, 100 ng/ml;

(2) Cocaine: Urine, 150 ng/ml; blood, 50 ng/ml;

(3) Cocaine metabolite: Urine,150 ng/ml; blood, 50 ng/ml;

(4) Heroin: Urine, 2,000 ng/ml; blood, 50 ng/ml;

(5) Heroin metabolite:

(i) Morphine: Urine, 2,000 ng/ml; blood, 50 ng/ml;

(ii) 6-monoacetyl morphine: Urine, 10 ng/ml; blood, 10 ng/ml;

(6) Lysergic acid diethylamide: Urine, 25 ng/ml; blood, 10 ng/ml;

(7) Marijuana: Urine, 10 ng/ml; blood, 2 ng/ml;

(8) Marijuana metabolite: Urine, 15 ng/ml; blood, 5 ng/ml;

(9) Methamphetamine: Urine, 500 ng/ml; blood, 100 ng/ml;

(10) Phencyclidine: Urine, 25 ng/ml; blood,10 ng/ml;

(iii) Tests:

(A) At the request or direction of any law enforcement officer authorized by the Department of the Interior to enforce this closure and restriction order, who has probable cause to believe that an operator of a motor vehicle has violated a provision of paragraph (i) or (ii) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(B) Refusal by an operator to submit to a test is prohibited, and proof of refusal may be admissible in any related judicial proceeding.

(C) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized law enforcement officer.

(D) Any test shall be conducted using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(iiii) Presumptive levels:

(A) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (i) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (ii)(B) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(B) The provisions of paragraph (iv)(A) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or multiple drugs, or any combination thereof.

iv. Definitions

(A) Open container: Any bottle, can, or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

(B) Possession of an open container includes any open container that is physically possessed by the driver or operator, or is adjacent to and reachable by that driver or operator. This includes, but is not limited to, containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

(e) Drug Paraphernalia

(1) The possession of drug paraphernalia is prohibited.

(2) Definition: Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of any state or Federal law, or regulation issued pursuant to law.

(f) Disorderly Conduct

(1) Disorderly conduct is prohibited. Disorderly conduct means that an individual, with the intent of recklessly causing public alarm, nuisance, jeopardy, or violence, or recklessly creating a risk thereof:

(i) Engages in fighting or violent behavior;

(ii) Uses language, an utterance, or gesture, or engages in a display or act that is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(iii) Obstructs, resists, or attempts to elude a law enforcement officer, or fails to follow their orders or directions.

(g) Eviction of Persons

(1) The public closure area is closed to any person who:

(i) Has been evicted from the event by the permit holder, whether or not the eviction was requested by the BLM;

(ii) Has been evicted from the event by the BLM; or

(iii) Has been ordered by a law enforcement officer to leave the area of the permitted event.

(2) Any person evicted from the event forfeits all privileges to be present within the perimeter fence or anywhere else within the public closure area even if they possess a ticket to attend the event.

(h) Motor Vehicles

(1) Motor vehicles must comply with the following requirements:

(i) The operator of a motor vehicle must possess a valid driver's license.

(ii) Motor vehicles and trailers must possess evidence of valid registration, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(iii) Motor vehicles must possess evidence of valid insurance, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(iv) Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway.

(v) Motor vehicles must not exceed the posted speed limit.

(vi) No person shall occupy a trailer while the motor vehicle is in transit upon a roadway, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(vii) Motor vehicles, other than a motorcycle or golf cart, must be equipped with at least two working headlamps, at least two functioning tail lamps and at least two functioning brake lights, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration, so long as they are adequately lit according to Black Rock City, LLC Department of Mutant Vehicle requirements.

(viii) Trailers pulled by motor vehicles must be equipped with at least two functioning tail lamps and at least two functioning brake lights.

(ix) Motor vehicles must display an unobstructed rear license plate that is in a place and position to be clearly visible, maintained free from foreign materials, and in a condition to be clearly legible, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(2) The public closure area is closed to motor vehicle use, except as provided below. Motor vehicles may be operated within the public closure area under the circumstances listed below:

(i) Participant arrival and departure on designated routes;

(ii) BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

(iii) Vehicles, mutant vehicles, or art cars operated by the permit holder's staff or contractors and service providers on behalf of the permit holder are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible to the rear of the vehicle while the vehicle is in motion;

(iv) Vehicles used by disabled drivers and displaying official state disabled driver license plates or placards are authorized at all times;

(v) Motorized skateboards, electric assist bicycles, or Go-Peds with or without handlebars;

(vi) Participant drop-off of approved burnable(s) and wood to the Burn Garden/Wood Reclamation Stations (located on open playa at 3:00, 6:00, 9:00 Promenades and the Man base) from 10:00 a.m. Sunday through the end of day Tuesday, post event; and

(vii) Passage through, without stopping, the public closure area on the west or east playa roads.

(viii) Support vehicles for art vehicles, mutant vehicles and theme camps will be allowed to drive to and from fueling stations.

(3) Definitions:

(i) A motor vehicle is any device designed for and capable of travel over land and which is self-propelled by a motor, but does not include any vehicle operated on rails or any motorized wheelchair.

(ii) Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion.

(iii) "Trailer" means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle. This includes a U-Haul, Camp trailer, pop-up trailer, 4′ x 7′ or larger flatbed trailer, enclosed cargo trailer, or RV style trailer.

(i) Public Camping

The public closure area is closed to public camping with the following exceptions:

(1) The permitted event's ticket holders, who are camped in designated event areas provided by the permit holder;

(2) Ticket holders who are camped in the authorized pilot camp;

(3) The permit holder's authorized staff, contractors, and BLM authorized event managers.

(j) Public Use

The public closure area is closed to use by members of the public, unless that person is traveling through, without stopping, the public closure area on the west or east playa roads; possesses a valid ticket to attend the event; is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at the event and that individual is assigned to the event; is a person working at or attending the event on behalf of the permit holder; or is authorized by the permit holder to be onsite prior to the commencement of the event for the primary purpose of constructing, creating, designing or installing art, displays, buildings, facilities or other items and structures in connection with the event; or is a commercial operation to provide services to the event organizers and/or participants authorized by the permit holder through a contract or agreement and authorized by BLM through a Special Recreation Permit.

(k) Unmanned Aircraft Systems

(1) The use of unmanned aircraft systems (UAS) is prohibited, unless the operator is registered through and complies with the Remote Control BRC program (RCBRC) and operates the UAS in accordance with Federal laws and regulations.

(2) Definitions:

(i) Unmanned aircraft means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

(ii) An UAS is the unmanned aircraft and all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.

(l) Lasers

(1) The possession and/or use of handheld lasers are prohibited. A laser means any hand held laser beam device or demonstration laser product that emits a single point of light amplified by the stimulated emission of radiation that is visible to the human eye.

(m) Weapons

(1) The possession of any weapon is prohibited except weapons within motor vehicles passing, without stopping, through the public closure area on the west or east playa roads.

(2) The discharge of any weapon is prohibited.

(3) The prohibitions above shall not apply to county, state, tribal and Federal law enforcement personnel who are working in their official capacity at the event.

(4) "Art projects" that include weapons and are sanctioned by the permit holder will be permitted after obtaining authorization from the BLM authorized officer.

(5) Definitions:

(i) Weapon means a firearm, compressed gas, or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand-thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, any implement designed to expel a projectile, switch-blade knife, any blade which is greater than 10 inches in length from the tip of the blade to the edge of the hilt or finger guard nearest the blade (*e.g.,* swords, dirks, daggers, machetes), or any other weapon the possession of which is prohibited by state law. Exception: This rule does not apply in a kitchen or cooking environment or where an event worker is wearing or utilizing a construction knife for their duties at the event.

(ii) Firearm means any pistol, revolver, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

(iii) Discharge means the expelling of a projectile from a weapon.

(n) Penalties

Any person who violates the above rules and restrictions may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both.

In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

Authority: 43 CFR 8364.1.

William Mack, Jr.,
Black Rock Field Office Manager, Winnemucca District.

[FR Doc. 2016–15681 Filed 6–30–16; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Third Review)]

Ammonium Nitrate From Russia; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 1, 2016. Comments on the adequacy of responses may be filed with the Commission by September 14, 2016.

DATES: *Effective Date:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 19, 2000, the Department of Commerce suspended an antidumping duty investigation on imports of ammonium nitrate from Russia (65 FR 37759, June 16, 2000). Following five-year reviews by Commerce and the Commission, effective April 5, 2006, Commerce issued a continuation of the suspended investigation on imports of ammonium nitrate from Russia (71 FR 17080). Effective May 2, 2011, Commerce terminated the suspension agreement and issued an antidumping duty order (76 FR 23569, April 27, 2011). Following the second five-year reviews by Commerce and the Commission, effective August 10, 2011, Commerce issued a continuation of the antidumping duty order on imports of ammonium nitrate from Russia (76 FR 49449). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review, the Commission defined the *Domestic Like Product* as all ammonium nitrate corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

---

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–359, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15371 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–983]

Certain Laser-Driven Light Sources, Subsystems Containing Laser-Driven Light Sources, and Products Containing Same; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 12) issued by the presiding administrative law judge ("ALJ") granting a joint motion to terminate the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on January 21, 2016, based on a complaint filed by Energetiq Technology, Inc. of Woburn, Massachusetts. *See* 81 FR 3473 (Jan. 21, 2016). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser-driven light sources, subsystems containing laser-driven light sources, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 8,969,841; 9,048,000; and 9,185,786. The respondents named in the Commission's notice of investigation are ASML Netherlands B.V. of Veldhoven, the Netherlands; ASML US, Inc. of Chandler, Arizona; and Qioptiq Photonics GmbH & Co. KG, of Gottingen, Germany. The Office of Unfair Import Investigations is not participating in the investigation.

On May 11, 2016, complainant and respondents filed a joint motion to terminate this investigation in its entirety based on a settlement agreement.

On May 31, 2016, the ALJ issued an ID (Order No. 12), granting the motion for termination. The ALJ found that the joint motion complies with the Commission Rules and that termination of the investigation will not adversely affect the public interest. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15610 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–457–A–D (Fourth Review)]

Heavy Forged Hand Tools From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty orders on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 1, 2016. Comments on the adequacy of responses may be filed with the Commission by September 14, 2016.

DATES: *Effective Date:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 19, 1991, the Department of Commerce issued antidumping duty orders on imports of the following classes or kinds of heavy forged hand tools from China: (1) Axes and adzes, (2) bars and wedges, (3) hammers and sledges, and (4) picks and mattocks (56 FR 6622). Following the first five-year reviews by Commerce and the Commission, effective August 10, 2000, Commerce issued a continuation of the antidumping duty orders on imports of heavy forged hand tools from China (65 FR 48962). Following second five-year reviews by Commerce and the Commission, effective February 16, 2006, Commerce issued a continuation of the antidumping duty orders on imports of heavy forged hand tools from China (71 FR 8276). Following the third five-year reviews by Commerce and the Commission, effective August 22, 2011, Commerce issued a continuation of the antidumping duty orders on imports of heavy forged hand tools from China (76 FR 52313). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission found four *Domestic Like Products:* (1) axes, adzes and hewing tools, other than machetes, with or without handles; (2) bar tools, track tools and wedges; (3) hammers and sledges, with heads weighing two pounds or more, with or without handles; and (4) picks and mattocks, with or without handles, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission found four *Domestic Industries:* (1) Domestic producers of axes, adzes and hewing tools, other than machetes, with or without handles; (2) domestic producers of bar tools, track tools, and wedges; (3)

---

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–360, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

domestic producers of hammers and sledges, with heads weighing two pounds or more, with or without handles; and (4) domestic producers of picks and mattocks, with or without handles. In the original investigations, the Commission excluded from the *Domestic Industries* companies that did no more than assemble imported heads with handles purchased from a domestic manufacturer. The Commission also excluded one domestic producer, Madison Mill, from the *Domestic Industries* under the related parties provision in the original investigations. In its full first five-year reviews and its expedited second and third five-year reviews, the Commission did not exclude any company as a related party.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its original investigations and subsequent reviews, and for each of the products identified by Commerce as *Subject Merchandise.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a

U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions,

please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15374 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–800, 801, and 803 (Third Review)]

Stainless Steel Sheet and Strip From Japan, Korea, and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the countervailing duty order on imports of stainless steel sheet and strip from Korea and the antidumping duty orders on imports of stainless steel sheet and strip from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 1, 2016. Comments on the adequacy of responses may be filed with the Commission by September 14, 2016.

DATES: *Effective Date:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 27, 1999, the Department of Commerce issued antidumping duty orders on imports of stainless steel sheet and strip in coils from Japan, Korea, and Taiwan (64 FR 40555 and 40565). On August 6, 1999, Commerce issued an countervailing duty order on imports of stainless steel sheet and strip in coils from Korea (64 FR 42923). Following five-year reviews by Commerce and the Commission, effective July 25, 2005, Commerce issued a continuation of the countervailing duty order on stainless steel sheet and strip in coils from Korea and the antidumping duty orders on stainless steel sheet and strip in coils from Japan, Korea, and Taiwan (70 FR 44886, August 4, 2005). Following the second five-year reviews by Commerce and the Commission, effective August 11, 2011, Commerce issued a continuation of the countervailing duty order on stainless steel sheet and strip in coils from Korea and the antidumping duty orders on stainless steel sheet and strip in coils from Japan, Korea, and Taiwan (76 FR 49726). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Japan, Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and full first and second five-year review determinations, the Commission found the *Domestic Like Product* to be stainless steel sheet and strip in coils corresponding to the scope of the subject merchandise.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and full first and second five-year review determinations, the Commission defined the *Domestic Industry* as all producers of stainless steel sheet and strip in coils.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

---

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–362, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted

(report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15369 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–928; Investigation No. 337–TA–937 (Consolidated)]

Certain Windshield Wipers and Components Thereof; Commission Determination To Grant the Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the joint motion to terminate the above-referenced investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted investigation No. 337–TA–928, *Certain Windshield Wipers and Components Thereof,* under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), on September 2, 2014, based on a complaint filed by Valeo North America, Inc. of Troy, MI, and Delmex de Juarez S. de R.L. de C.V. of Mexico (collectively, "Valeo"). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,891,044 ("the '044 patent"); 7,937,798 ("the '798 patent"); and 8,220,106 by Federal-Mogul Corp. of Southfield, Michigan, Federal-Mogul Vehicle Component Solutions, Inc. of Southfield, Michigan, and Federal-Mogul S.A. of Aubange, Belgium (collectively, "Federal-Mogul"). 79 FR 52041–42 (Sep. 2, 2014).

On October 15, 2014, Valeo filed another complaint, against Trico Products Corporation of Rochester Hills, Michigan; Trico Products of Brownsville, Texas; and Trico Componentes SA de CV of Tamaulipas, Mexico (collectively, "Trico," Respondent, or Respondents), asserting a violation of section 337(a)(1)(B) by reason of infringement of one or more claims of the '044 patent and the '798 patent. On November 21, 2014, the Commission instituted Investigation No. 337–TA–937, *Certain Windshield Wipers and Components Thereof,* based on this complaint filed by Valeo against Trico. 79 FR 69525–26 (Nov. 21, 2014). Subsequently, the two investigations were consolidated. Order No. 8, Inv. No. 337–TA–928 (Dec. 9, 2014). The Office of Unfair Import Investigations ("OUII") is not participating in this investigation.

On May 19, 2015, Valeo and Federal-Mogul reached a settlement agreement and filed a joint motion to terminate the Federal-Mogul respondents from the consolidated investigation, which was granted on June 5, 2015. See ALJ Order No. 24, Inv. No. 337–TA–928 (June 5, 2015) (not reviewed June 29, 2015).

On May 27, 2016, Valeo and Trico filed a joint motion to terminate the investigation on the basis of a settlement agreement. On June 10, 2016, the Commission extended the target date for completion of this investigation to June 30, 2016.

Having examined the joint motion, the settlement agreement, and the record of this investigation, the Commission has determined to grant the joint motion to terminate the investigation and finds the motion in compliance with Commission rule 210.21(b). The Commission finds, pursuant to Commission rule 210.50(b)(2), that this termination will not prejudice the public interest.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15611 Filed 6–30–16; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Hand Dryers and Housings for Hand Dryers, DN 3159;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Excel Dryer, Inc. on June 24, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hand dryers and housings for hand dryers. The complaint names as respondents ACL Group (Intl.) Ltd. of the United Kingdom; Alpine Industries Inc. of Irvington, NJ; FactoryDirectSale of Ontario, CA; Fujian Oryth Industrial Co., Ltd. (a/k/a Oryth) of China; Jinhua Kingwe Electrical Co. Ltd. (a/k/a Kingwe) of China; Penson & Co. of China; Taizhou Dihour Electrical Appliances Co. Ltd. (a/k/a Dihour) of China; TC Bunny Co., Ltd. of China; Toolsempire of Ontario, CA; US Air Hand Dryer of Sacremento, CA; Vinovo Sovereign Industrial Jiaxing Co. Ltd of China; and Zhejiang Aike Appliance Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order, a cease and desist order and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the

---

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3159") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: June 28, 2016.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15702 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–929 (Enforcement Proceeding)]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to March 17, 2016 limited exclusion order and cease and desist order issued in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Robert J. Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on September 9, 2014, based on a complaint filed by Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, "ARM"). 79 FR 53445–46 (Mar. 24, 2016). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same, by reason of infringement of claims 5–8 and 18–20 of U.S. Patent No. 8,720,320 ("the '320 patent"). *Id.* The notice of institution of the investigation named as respondents Solofill, LLC ("Solofill"); DongGuan Hai Rui Precision Mould Co., Ltd. ("DongGuan"); Eko Brands, LLC ("Eko Brands"); Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, "Evermuch"); and several additional respondents who were terminated by reason of consent order or settlement. 79 FR 53445. The Office of Unfair Import Investigations ("OUII") was also named as a party to the investigation. *Id.* The Commission found Eko Brands and Evermuch in default for failure to respond to the complaint and notice of investigation. Notice (May 18, 2015).

On March 17, 2016, the Commission found no violation of section 337 by Solofill and DongGuan because claims 5–7, 18, and 20 were invalid for a lack of written description and claims 5 and 6 were invalid as anticipated. 81 *FR* 15742–43. The Commission, however, presumed that the allegations were true with respect to the remaining allegations against the defaulted parties Eko Brands and Evermuch, and thus concluded that they violated section 337 with respect to claims 8 and 19. *Id.* at 15743. The Commission issued a limited exclusion order prohibiting Eko Brands and Evermuch from importing certain beverage brewing capsules, components thereof, and products containing the same that infringed claims 8 or 19 of the '320 patent. *Id.* The Commission also issued cease and desist orders against Eko Brands and Evermuch prohibiting the sale and distribution within the United States of articles that infringe claims 8 or 19. *Id.*

On June 1, 2016, ARM filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75(b) to investigate alleged violations of the limited exclusion order and the cease and desist order against Eko Brands by both Eko Brands and Espresso Supply, Inc. (collectively, ''Respondents''). ARM alleges that Espresso Supply, Inc., should be subject to the enforcement proceeding because it purchased the Eko Brands company in November of 2015.

---

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Having examined the enforcement complaint and the supporting documents, the Commission has determined to institute a formal enforcement proceeding to determine whether Respondents are in violation of the March 17, 2016 limited exclusion order and cease and desist order issued in the original investigation and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainants Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc.; (2) respondents Eko Brands and Espresso Supply, Inc.; and (3) OUII.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: June 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15612 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1012]

Certain Magnetic Data Storage Tapes and Cartridges Containing the Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 27, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of FUJIFILM Corporation of Tokyo, Japan and FUJIFILM Recording Media U.S.A., Inc. of Bedford, Massachusetts. Supplements to the complaint were filed on June 6, 8, and 10, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic data storage tapes and cartridges containing the same by reason of infringement of U.S. Patent No. 6,641,891 (''the '891 patent''); U.S. Patent No. 6,703,106 (''the '106 patent''); U.S. Patent No. 6,703,101 (''the '101 patent''); U.S. Patent No. 6,767,612 (''the '612 patent''); U.S. Patent No. 8,236,434 (''the '434 patent''); and U.S. Patent No. 7,355,805 (''the '805 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 27, 2016, *Ordered That—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain magnetic data storage tapes and cartridges containing the same by reason of infringement of one or more of claims 1, 4–9, 11, and 14 of the '891 patent; claims 2, 5, and 6 of the '106 patent; claim 1 of the '101 patent; claims 1, 2, 4, 5, and 7–11 of the '612 patent; claim 1 of the '434 patent; and claims 3 and 10 of the '805 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1).

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

FUJIFILM Corporation, 7–3 Akasaka 9-chome, Minato-ku, Tokyo 107–0052, Japan

FUJIFILM Recording Media U.S.A., Inc., 45 Crosby Dr., Bedford, MA 01730–1401

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sony Corporation, 1–7–1 Kōnan, Minato-ku, Tokyo 108–0075, Japan

Sony Corporation of America, 550 Madison Avenue, New York, NY 10022

Sony Electronics Inc., 16535 Via Esprillo Building 1, San Diego, CA 92127

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15627 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1011]

Certain Inkjet Printers, Printheads, and Ink Cartridges, Components Thereof, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 27, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of HP Inc. of Palo Alto, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet printers, printheads, and ink cartridges, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,270,201 ("the '201 Patent"); U.S. Patent No. 6,491,377 ("the '377 Patent"); U.S. Patent No. 6,260,952 ("the '952 Patent"); U.S. Patent No. 7,004,564 ("the '564 Patent"); U.S. Patent No. 7,090,343 ("the '343 Patent"); and U.S. Patent No. 7,744,202 ("the '202 Patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 27, 2016, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain inkjet printers, printheads, and ink cartridges, components thereof, and products containing same by reason of infringement of one or more of claims 1–3, 6, 13–15, 17, 23–25, 28–30, 35, and 37 of the '201 patent; claims 22–24 of the '377 patent; claims 1–3, 5–8, 10, 13, 14, and 16 of the '952 patent; claims 1–24 of the '564 patent; claims 1–22 of the '343 patent; and claims 1–6, 9–12, 16, 18, 21, 23, and 26–30 of the '202 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: HP Inc., 1501 Page Mill Road, Palo Alto, California 94304–1185.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Memjet, Ltd., 61/62 Fitzwilliam Lane, Dublin 2, Ireland
Memjet US Services, Inc., 10918 Technology Place, San Diego, California 92127
Memjet Home and Office, Inc., 923 South Bridgeway Place, Suite 220, Eagle, Idaho 83616
Memjet North Ryde Pty Ltd., 6–8 Lyon Park Road, North Ryde, New South Wales, 2113, Australia
Memjet Technology Ltd., 61/62 Fitzwilliam Lane, Dublin 2, Ireland
Memjet Holdings Ltd., 61/62 Fitzwilliam Lane, Dublin 2, Ireland
Afinia LLC (d/b/a Afinia Label), 8150 Mallory Court, Chanhassen, Minnesota 55317
Astro Machine Corporation, 630 Lively Boulevard, Elk Grove Village, Illinois 60007
Colordyne Technologies, LLC, 3275 Intertech Drive, Suite 100, Brookfield, Wisconsin 53045
Formax Technologies, Inc., 1 Education Way, Dover, New Hampshire 03820
Neopost USA, Inc., (d/b/a Neopost Northwest, Neopost Northeast, Neopost Priority Systems, and/or Neopost Southeast), 478 Wheelers Farms Road, Milford, Connecticut 06461
Printware LLC, 2935 Waters Road, Suite 160, Eagan, Minnesota 55121
VIPColor Technologies USA, Inc., 6737 Mowry Avenue, Newark, California 94560
ABC Office (d/b/a Brent Barlow), 1142 West Flint Meadow Drive, Kaysville, Utah 84037
All for Mailers, Inc., 4 Roland Avenue, Feasterville, Pennsylvania 19053
Fernqvist Labeling Solutions, Inc., 2544 Leghorn Street, Mountain View, California 94043
Information Management Services LLC, (d/b/a MyBinding.com), 5500 N.E. Moore Court, Hillsboro, Oregon 97124
JMP Business Systems, Inc., 1450 Tollhouse Road, No. 103, Clovis, California 93611
Mono Machines LLC, 1133 Broadway Suite 706, New York, New York 10010
Ordway Corporation, (d/b/a Print & Finishing Solutions), 1632 Sierra

Madre Circle, Placentia, California 92870

Pacific Barcode Inc., 27531 Enterprise Circle West, Temecula, California 92590

Pacific Code & Label, Inc., 37 N.E. 47th Avenue, Building B, Portland, Oregon 97213

Parts Now! LLC, 434 S. Yellowstone Drive, Suite 100, Madison, Wisconsin 53719

Trademark Copysystems Inc., (d/b/a Addrex—Addresser Sales Company), 13864 Bennett Road, Cleveland, Ohio 44133

Vivid Data Group LLC, 4711 Hines Place, Suite 112, Dallas, Texas 75235

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15621 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–379 and 731–TA–788, 792, and 793 (Third Review)]

Stainless Steel Plate From Belgium, South Africa, and Taiwan Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the countervailing duty order on stainless steel plate from South Africa and the antidumping duty orders on stainless steel plate from Belgium, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 1, 2016. Comments on the adequacy of responses may be filed with the Commission by September 14, 2016.

DATES: *Effective Date:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 11, 1999, the Department of Commerce issued a countervailing duty order on imports of certain stainless steel plate from South Africa (64 FR 25288). On May 21, 1999, Commerce issued antidumping duty orders on imports of certain stainless steel plate from Belgium, South Africa, and Taiwan (64 FR 27756).[2] On March 11, 2003, as a result of intervening litigation of the Commission's original determinations, Commerce amended those antidumping and countervailing duty orders on imports of certain stainless steel plate to remove the original language that excluded cold-rolled stainless steel plate in coils (68 FR 11520 and 68 FR 11524). Following five-year reviews by Commerce and the Commission, effective July 18, 2005, Commerce issued a continuation of the countervailing duty order on imports of stainless steel plate from South Africa and the antidumping duty orders on imports of stainless steel plate from Belgium, South Africa, and Taiwan (70 FR 41202). Following the second five-year reviews by Commerce and the Commission, effective August 30, 2011, Commerce issued a continuation of the countervailing duty order on imports of stainless steel plate from South Africa and the antidumping duty orders on imports of stainless steel plate from Belgium, South Africa, and Taiwan (76 FR 53882). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

---

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–361, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

[2] Commerce revoked the antidumping duty order regarding stainless steel plate from Korea as a result of proceedings before the World Trade Organization. 76 FR 74771 (December 1, 2011) (implementing determination under Section 129 of the Uruguay Round Agreements Act regarding stainless steel plate in coils from Korea). Commerce had already revoked the antidumping duty order on stainless steel plate from Italy after the Commission reached a negative determination in its second five-year review of that order. 76 FR 54207 (August 31, 2011). Commerce also had previously revoked an antidumping duty order on stainless steel plate from Canada after the Commission reached a negative determination in its first five-year review of that order. 70 FR 41207 (July 18, 2005).

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belgium, South Africa, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations after remand and its full first and second five-year review determinations, the Commission defined a single *Domestic Like Product* as certain (hot-rolled and cold-rolled) stainless steel plate in coils, coextensive with Commerce's scope definition. Certain Commissioners defined the *Domestic Like Product* differently in the original determinations.[3]

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations after remand and its full first and second five-year review determinations, the Commission defined the *Domestic Industry* as all producers of certain stainless steel plate in coils. Certain Commissioners defined the *Domestic Industry* differently in the original determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the

---

[3] While the Commission majority in the original determinations defined two separate domestic like products (*i.e.,* hot-rolled stainless steel plate in coils and cold-rolled stainless steel plate in coils), on remand the Commission majority's determinations involved a single domestic like product, certain stainless steel plate in coils.

Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject*

Merchandise from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15375 Filed 6–30–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Explosives License or Permit (ATF F 5400.13/5400.16)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 25715, on April 29, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 1, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens, ATF Industry Liaison, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405, at telephone: 304–616–4421. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of an existing collection without change.

2. *The Title of the Form/Collection:* Application for Explosives License or Permit.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): (ATF F 5400.13/5400.16).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: Chapter 40, Title 18, U.S.C., provides that any person engaged in the business of explosive materials as a dealer, manufacturer, or importer shall be licensed (18 U.S.C. 842(a)(1).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,200 respondents will take 1.5 hours to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15,300 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 28, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–15669 Filed 6–30–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0091]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Response Team Customer Satisfaction Survey

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 25714, on April 29, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 1, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer George, Fire Investigations and Arson Enforcement Division, ATF NCETR, Corporal Road, Building 3750 Redstone Arsenal, Huntsville, Alabama 35898 at: *Jennifer.George@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* National Response Team Customer Satisfaction Survey.

3. *The agency form number, if any, and the applicable component of the Department* sponsoring the collection: *Form number:* None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The National Response Team (NRT) survey is used to support a Bureau performance measure and to assess strengths and weaknesses of a major program of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 20 respondents will take 10 minutes to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 28, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–15668 Filed 6–30–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Approval of a New Collection Assessing Potential Benefits of Accessible Web Content for Individuals Who Are Blind

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Disability Rights Section, will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until August 30, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, by any one of the following methods: By email at *DRS.PRA@usdoj.gov;* by regular U.S. mail at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885; by overnight mail, courier, or hand delivery at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005; or by phone at (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the DRS Information Line).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- —Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
- —Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- —Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- —Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New information collection.

2. *The Title of the Form/Collection:* Assessing Potential Benefits of Accessible Web Content for Individuals Who Are Blind.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

Affected public who will be asked to respond, as well as a brief abstract: Affected public (Primary): Individuals who are blind.

Affected Public (Other): None.

Abstract: DOJ's Civil Rights Division, Disability Rights Section, is requesting PRA approval of a new information collection to assess potential benefits of accessible Web content to individuals who are blind and to inform future rulemaking under the Americans with Disabilities Act. DOJ proposes to have respondents who are blind interact with Web content that has high accessibility and low accessibility to assess any time savings that people who are blind experience when interacting with accessible Web content. The collection will also request additional information regarding challenges, if any, experienced by respondents while interacting with inaccessible Web content.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 30 respondents will participate at three hours per respondent. All of the respondents will fully complete the collection.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 90 hours. It is estimated that respondents will take an average of three hours to complete the process. The burden hours for collecting respondent data sum to 90 hours (30 respondents × 3 hours = 90 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 28, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–15670 Filed 6–30–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On June 27, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Montana, Helena Division, in the lawsuit entitled *United States* v. *American Chemet Corporation*, Case No. 6:16–cv–00053–CCL.

The Consent Decree resolves the claims of the United States set forth in the complaint against American Chemet Corporation for injunctive relief and costs to be incurred in connection with the East Helena Superfund Site ("Site"), located in East Helena, Lewis and Clark County, Montana, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607. Under the Consent Decree, the settling defendant agrees to finance and perform the work for the Site and to reimburse future costs to be incurred by the United States Environmental Protection Agency.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *American Chemet Corporation*, D.J. Ref. No. 90–11–3–11122. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $16.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is $11.50.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15658 Filed 6–30–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Final Notice of Job Corps Center for Closure

AGENCY: Office of Job Corps, Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (the Department or DOL) issues this notice to announce its final decision to close the Ouachita Civilian Conservation Center (Ouachita) in Royal, Arkansas. The Office of Job Corps (OJC) in ETA published an updated methodology for selecting a Job Corps Center for closure and requested comments on the proposed decision to close Ouachita at 81 FR 12529 on March 9, 2016. A total of 292 public comments were received in response to the proposal to close Ouachita. After reviewing all comments, the Department has decided to close the Ouachita Job Corps Center.

FOR FURTHER INFORMATION CONTACT: Lenita Jacobs-Simmons, National Director, Office of Job Corps, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4463, Washington, DC 20210; Telephone (202) 693–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-(877)889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION

I. Closure Criteria

The Department originally announced its methodology for determining whether to close a center based on chronic low performance in the **Federal Register** at 79 FR 51198 on August 27, 2014. The March 9, 2016, **Federal Register** Notice did not alter this criterion except for changing the five-year period of data reviewed from Program Years (PYs) 2008–2012 to the most recent five years available. Comments were not requested on the performance-based criteria in proposing the closure of the Ouachita Center.

The March 9, 2016, **Federal Register** Notice also added two additional criteria for the closure of a Job Corps center: Closure based on a joint decision of the Secretaries of Labor and Agriculture, as described in a December 2014 report to Congress; and closure based on an evaluation of the effort required to provide a high-quality education and training program at the center. The Department did not use either of these criteria in proposing or evaluating the Ouachita Center for closure. Comments were not requested on these closure criteria.

II. Background of the Job Corps Program and Process of Selecting a Center for Closure

The Job Corps program, with centers across the country, seeks to change lives through education and job training for in-demand careers. Job Corps serves at-risk young people who are overcoming major challenges, which can include deep poverty, homelessness, or multiple foster care placements. The program represents the core American value that no matter who you are or where you come from, you should have the opportunity to succeed.

On March 9, 2016, the Department proposed to close Ouachita under the chronic low-performance criterion. Using data from PY 2010–2014, OJC calculated each center's Overall Rating based on the center's five-year Outcome Measurement System (OMS) performance level, the five-year On-Board Strength (OBS), and the five-year Facility Condition Index. Based on this methodology, Ouachita received the lowest Overall Rating and, therefore, the lowest ranking of all centers considered. After ranking the centers based on the primary criteria, the Department then applied the four additional considerations and determined that none of those considerations precluded the closure of Ouachita.

III. Summary of Comments and Discussion

The comment period was open from March 9, 2016, through April 8, 2016. Two hundred ninety-two public comments were received in response to the proposal to close Ouachita. After considering these comments, the Department has decided to close the Ouachita Civilian Conservation Center due to its chronic low performance. The Department has concluded that Ouachita's chronic inability to meet performance goals necessitates its closure and the reallocation of these student slots and resources to higher-performing Job Corps facilities. The Department has also concluded that closing this Center will not reduce the overall number of students who can be served in Job Corps.

The comments are summarized briefly and discussed below.

Two commenters generally support Job Corps' decision to close the Ouachita Job Corps Center. A current student said he was not receiving adequate instruction in his trade because his instructor is never there. A member of the community commented that the center has been going downhill for the past five years; the commenter says that morale among the students is low and that there is racism and backstabbing among the staff.

Three commenters requested an extension of the 30-day comment period. Section 159(j)(2) of the Workforce Innovation and Opportunity Act (WIOA) provides that prior to the closure of any Job Corps center, the Department must establish "a reasonable comment period, not to exceed 30 days, for interested individuals to submit written comments to the Secretary." The comment deadline of April 8, 2016, reflected the 30-day maximum. By statute, the Department could not extend the comment period on this proposed closure.

A large number of commenters generally expressed the view that the Department should not close Ouachita because of the effect that closure would have on the community. Several commenters urged DOL to maintain Ouachita because of recent steps the center has taken to work with local schools, with commenters asserting that the program could support a new Arkansas state employment initiative. DOL recognizes the beneficial effects of a center's operation on its local area, and that closing a center may indirectly affect the local economy and the broader community. However, the core mission of the Job Corps program is to train students to become more employable, responsible, and productive citizens. The closure of Ouachita advances this mission by allowing OJC to shift these resources and opportunities to higher-performing centers, thereby improving the performance of the entire Job Corps system and ensuring that students have the best opportunity to succeed.

Many commenters expressed their concern that current and future Job Corps students will suffer if the center closes. DOL appreciates the concern but is confident that disruption to students can be minimized while ensuring that current and future students have access to a higher performing Job Corps center. All students currently enrolled at Ouachita will have the opportunity to complete their training and graduate while the center remains open or transfer to higher-performing centers in Arkansas or the region. In addition, prospective students from Arkansas will continue to be served by the two other centers in the state, as well as other centers in the region that offer training in the area they wish to pursue. Given Ouachita's chronic poor performance, we have concluded that current and future students will be better served at higher performing centers.

Multiple commenters suggested that the decision to close Ouachita be delayed. Several urged DOL to provide the center with additional resources and give it the opportunity to improve its performance. Another commenter suggested that the center be closed down temporarily so that the center and its management could be retooled. Other commenters suggested that other options and strategies be considered before closing the center. Finally, one commenter asked the decision be delayed until the Department presents an alternative plan to Congress that includes providing direct technical assistance to the U.S. Forest Service, which operates the center.

DOL has concluded that these suggestions will not lead to improved center performance and that the resources will be better utilized at higher preforming centers. DOL and the Forest Service's parent agency, the U.S. Department of Agriculture (USDA), have used numerous performance improvement tools and strategies at Ouachita over several years, including intensive oversight and interventions; however, the center has continued to chronically underperform. Ouachita has been on a Performance Improvement Plan (PIP) for five years. For the last four Program Years, the center received more frequent on-site visits, audits, and direct technical assistance from DOL and the USDA. During the year prior to the proposal for closure, Job Corps and the Forest Service made additional concerted, targeted efforts to improve Ouachita's performance, including implementing an interagency performance improvement team. Even with these efforts, Ouachita failed to meet a single OMS goal for on-center measures during PY 2014, the most recent complete program year for which data is available. Additionally, before proposing Ouachita for closure, the

Department applied an additional consideration, as discussed in the published closure methodology, of whether there had been significant recent performance improvements as the center. There had not. This prolonged inability to improve performance indicates that additional resources and efforts are not likely to be successful and thus should not be expended. Balanced against the lost opportunity to current and future students to improve their lives by attending a higher-performing center, the Department has concluded that closing Ouachita achieves the best outcome for the Job Corps program and its students.

Some commenters complained that Ouachita has not received adequate resources or support from DOL and the Forest Service. Some of these commenters asserted that the center should not be closed because it has been targeted by DOL or the USDA or because it has been poorly managed by the Forest Service. Others argued DOL has specifically targeted Civilian Conservation Centers (CCCs) for closure, or attributed the low performance of Ouachita to problems between the Forest Service and DOL. Several said it is incumbent upon the Forest Service and DOL to devise a reasonable solution to fix the problem of Ouachita's poor performance. Two commenters stated that Ouachita should not be closed because it has undergone too many changes in leadership over the last several years.

Neither the Department nor the Forest Service has targeted Ouachita for closure, nor has the Department targeted CCCs in general for closure. DOL's decision to close Ouachita is based on its chronic low-performance over the last five years, not on the entity that operates the center. The Department has worked, and will continue to work, with the Forest Service to improve the CCCs and maintain their important role within the Job Corps system. As noted above, DOL and USDA cooperated to provide significant resources toward improving Ouachita's poor performance. Despite these efforts the center's performance showed no sustained improvement, and the Department does not think investment of additional time or resources will lead to improved performance at the center. Finally, the Department understands the commenters' concerns that frequent changes in leadership could affect improvement efforts at a struggling center. However, center management failed to make substantial improvements even with intensive federal assistance in PY2014.

Four commenters stated that the center should remain open because of its historical significance. While DOL agrees that the potential historical nature of any building is important, historical significance itself is not a reason to keep a center in operation and serving students. By law, the possible historical significance of the center must be taken into account in determining the future use of the property.

One individual commented that Ouachita should remain open because it is one of only six Job Corps centers offering the urban forestry trade. Students currently in the urban forestry trade at Ouachita will have an opportunity to complete their training at Ouachita or transfer to a higher performing center offering the trade. Additionally, each Job Corps center regularly evaluates its career technical training offerings by reviewing local labor market information to determine in-demand industry sectors and identify emerging occupations suitable for its training program. These regular evaluations and other relevant information will determine whether there is a need for another center to offer training in the urban forestry trade.

Another commenter discussed the unique role played by the rural CCCs, praising services—including fire suppression and controlled burns, among others—that CCCs provide to small communities and the skills students learn by aiding in the provision of those services. The Department agrees that Job Corps provides valuable services to smaller communities. However, the primary mission of the program is the education and employment of disadvantaged youth, and the Department has determined that continuing to operate Ouachita is not in the best interest of students or the program as a whole because of the center's chronic poor performance.

One commenter expressed opposition to the proposed decision to close the center because he believes student recruitment is treated differently for Forest Service-operated centers than contractor-operated centers. This commenter also stated that Forest Service-operated centers are at a disadvantage because they more strictly enforce safety rules and Job Corps' zero-tolerance policy, resulting in the termination of more students. However, another commenter had a contrary view, stating Ouachita staff and leadership are afraid to dismiss students from the program in accordance with the zero-tolerance policy, even for "major offenses." All Job Corps centers, including CCCs operated by the Forest Service, must comply with all requirements of the program as outlined in the Job Corps Policy and Requirements Handbook (PRH), including compliance with the discipline policy. Recruitment procedures and standards also are the same regardless of the type of center operator.

Some commenters alleged that DOL has not done enough to ensure a sufficient number of students are recruited for Ouachita, and several commenters asserted that the Outreach and Admissions (OA) provider has suppressed the center's OBS, either intentionally or through poor performance. Some commenters blamed Job Corps' Dallas Regional Office for these problems, asserting that the center is low performing because Job Corps has not assisted with providing more applicants from Arkansas and other states. One commenter complained that the standards for maintaining OBS unfairly affected Ouachita because the contractor is not recruiting students who are committed to the program and thus leave within the first 90 days. This commenter and other commenters complained that OBS goals are too difficult with the challenging students Ouachita receives. Some commenters stated that the present OA contractor for Arkansas operates the Little Rock Job Corps Center, which is incorrect.

Ouachita has received a steady number of referrals of prospective students over the last year from the OA contractor currently serving Arkansas. For calendar year 2015, Ouachita received referrals of 246 prospective students from the OA contractor, which resulted in 213 students enrolling at the center. This is above the OA contract's annual goal, which is to facilitate the enrollment of 209 students at Ouachita each year. Further, while OBS is part of the chronic low-performance closure methodology, it is only 5 percent of the calculation that determines the center's rank. In contrast, OMS performance, which measures the academic and career outcomes a center produces for its students, is 90 percent. Thus, while OBS was a factor in identifying the center as low-performing, it was not the predominant factor. The center's consistent failure to produce the outcomes Job Corps expects for its students, as measured through the OMS, was the primary factor.

Ouachita has had a high rate of terminations and an unacceptably short length of stay for many students, which is reflected in the center's OMS data. In PY 2014, 30.2 percent of Ouachita students left the center within the first 90 days, versus only 20.9 percent nationally. Even after the performance improvement team provided additional technical assistance, the length of stay for students remained unacceptably low and the center was not able to meet its OMS or OBS goals. Job Corps is a training program for at-risk youth, and is designed to help young people who have failed in school and who have other challenges to change the direction of their lives and become productive participants in the labor force. Many of Job Corps' students face challenges in committing to the program and complying with program rules, particularly those who have difficulty in a structured environment. While some commenters blamed the OA contractor for recruiting students who were not committed to the program, part of the center's role is to help students transition and adjust to center life—and to understand the rewards to sticking with the program. A high termination rate is an indication that a center is unable to meet this basic but critical element of Job Corps' operation.

One commenter requested that DOL speed the process of admission to a center, noting that four applicants from students at a high school were waiting for a placement and asserting that Job Corps "is a vital organization that needs to be saved" for students who cannot perform in school. As stated throughout, the Department is committed to the future of the Job Corps program and will maintain current opportunities for eligible Arkansas youth to participate, even with Ouachita's closure. DOL cannot speak to the specific admissions issues for the four applicants referenced in the comment, but it works to ensure an efficient process for reviewing applications and admitting qualified applicants to the program.

One commenter asserted that Ouachita's performance was adversely affected by the nationwide moratorium on changing trades offered at centers that began in 2010. In PY 2010, Job Corps temporarily stopped accepting requests for trade changes outside of its ongoing process to modernize its Career Technical Training (CTT) program. During this process, trade-change requests made by Forest Service centers on PIPs, including Ouachita, continued to be accepted. In fact, these centers' trade-change requests were processed on an accelerated track. Ouachita, however, made no trade-change request.

Multiple commenters stated that Job Corps must account for the different backgrounds and challenges of students at Ouachita. Some stated that students arrived at Ouachita with serious medical, mental health, and drug problems. Every Job Corps center is expected to deliver the best outcome for its students regardless of those students' backgrounds. OJC recognizes that Job Corps students enter the program with a variety of challenges, including those identified by the commenters, but part of a center's role is to identify any challenges each student has and develop strategies to address those challenges. Ouachita's poor performance demonstrates that it has not adequately done so and that is one reason students will be better served at higher performing centers. One commenter asserted that Ouachita should not be closed given the unique challenges it faces, including a low state minimum wage in Arkansas, the poor educational attainment in the states from which Ouachita draws its students, the poor economic conditions in Arkansas, and the failure of OMS to reflect those challenges. The performance data used in the methodology appropriately reflects the challenges identified by the commenter. Several of the OMS performance goals related to educational attainment and wage attainment are adjusted based on factors such as the educational level of the enrollees and the characteristics of the local labor market. Therefore, these goals are tailored to the economic and educational environment surrounding a center, and the challenges faced by students in Arkansas and the surrounding area do not explain Ouachita's long-term poor performance.

The same commenter stated that that there is a goal disparity between Ouachita and its Career Transition Services (CTS) contractor because the career placement goals based on wages and earnings for the CTS contractor are lower than the average wage goals for the three Arkansas centers that the contractor serves. The commenter stated this difference is "incongruous" and "can lead to cross purposes" for the centers and the CTS contractor. However, Job Corps' model-based goals for centers and CTS providers are not simply an average of the goals of the three centers in Arkansas, but rather are calculated based on regression analysis and estimate what impact various factors may have on the achievement of the measure in question. The goals for wages and earnings are designed to adjust for differences in the background characteristics of the students served as well as differences in the types of training programs students received and differences in the local labor markets where students are expected to find employment. There is not perfect overlap in the students served by ArkansasWEN, the CTS provider serving Ouachita, and the student population served at Ouachita and the other Arkansas centers. In addition, about 15 to 20 percent of the students served by ArkansasWEN attended centers outside of Arkansas and a similar percentage of students attending Arkansas centers were placed outside of Arkansas and served by other CTS providers. OJC believes it fairly calculated the wage goals for Ouachita based on the students it serves, type of training, and labor market conditions. Ouachita, like any center, is expected to meet its annual performance goals regardless of the goals assigned to other centers or service providers. Its chronic inability to do so, despite ample assistance from DOL and USDA, supports the decision to close Ouachita.

One commenter questioned whether the Department considered the performance of the OA/CTS provider for Ouachita as part of its proposal to close the center, given that Ouachita's OMS rating is based in part on the performance of the OA/CTS provider. While there is overlap in performance metrics applied to center operators and OA and CTS service providers, as stated above, each Job Corps center is responsible for meeting the performance goals established for that center. As such, the Department looked only at the each center's performance over the last five years on the 15 OMS performance measures, and it did not consider the performance of the OA/CTS provider before making its decision.

Several commenters noted that Ouachita would not be considered low performing under WIOA. The Department maintains that it is not possible to make this determination. Job Corps has not yet begun to collect data on WIOA performance measures. As such, it is not possible to determine which centers will be considered low performing under WIOA, though the Department notes that the post-WIOA OMS is unlikely to be significantly different than the WIA OMS. Further, given Ouachita's chronic poor performance, it would be to the detriment of current and future students to continue operation of the center until WIOA performance data is available.

One commenter noted that all three Arkansas centers, including Ouachita, are among Job Corps' lowest performers, asserting that the Department should not close Ouachita until it deduces why. This commenter suggested that under WIOA, both of Arkansas' remaining centers, Cass and Little Rock, could be in line for closure due to their low performance. As stated in the Additional Criteria for potential Job Corps closures, Job Corps aims to maintain a presence in all 50 states. The

Department is committed to making the Job Corps program accessible to eligible Arkansas youth, and it will reinvest resources from Ouachita to improve the outcomes at its remaining, higher-performing centers, including those in Arkansas.

Several commenters urged DOL to transfer management of Ouachita to a private operator. Many of these commenters asserted that DOL is legally required to do so by WIOA. Some commenters stated that WIOA requires the Department to "exhaust" its options prior to closing a center. In fact, WIOA does not require the Department to competitively select a private entity to operate this center. WIOA sec. 159(f)(4) empowers the Secretary of Labor, in consultation with the Secretary of Agriculture, to competitively select an entity to operate a CCC if certain conditions related to the center's performance under the WIOA performance measures are met. Division H, title I, section 109 of the Consolidated Appropriations Act, 2016, also stated that the Secretary of Labor, in consultation with the Secretary of Agriculture, "may select an entity on a competitive basis to operate" a CCC if it has had consistently low performance under Job Corps' pre-July 1, 2016 performance accountability system or its post-July 1, 2016 performance system. Neither of these provisions *require* the Department to transfer management of Ouachita to a private operator—the WIOA performance system, as noted above, is not yet in effect, making WIOA sec. 159(f)(4) inoperative at this point. Furthermore, the language of sec. 109 grants the Secretary of Labor discretion as to whether DOL will competitively select an entity to operate a CCC.

The Department has determined that the better approach for Ouachita is closure. The problems at Ouachita are extensive, and there is insufficient evidence that would suggest that a change in operators would result in dramatic improvement. Closing Ouachita will allow the Department to reinvest its resources into improving its remaining centers while maintaining student opportunities to participate in the Job Corps program. Importantly, the Department has concluded that closing Ouachita will not reduce the number of students who can be served in Job Corps. Thus, for the reasons stated above, the Department has decided to close Ouachita, not contract it to a private entity.

One commenter asserted that it is improper to use the most recent performance data as a basis for selecting a center to close. The commenter referenced the DOL Office of the Inspector General's (OIG) February 27, 2015, audit report that some centers did not comply with Job Corps' zero-tolerance policy to avoid adverse effect on their performance measures. Based on this report, the commenter concludes that "utilizing the [OMS] rating system is a flawed approach" because "those same centers would be willing to fabricate information in their books about other matters as well, negating the accuracy of any rating system."

Nothing in OIG's audit report supports or suggests the conclusion drawn by the commenter. There is no evidence or allegation that center operators are undermining the OMS system—and in turn, the method by which the Department selected Ouachita for closure—by directly fabricating or altering performance data. Job Corps conducts regular data-integrity audits through a third-party consultant to identify and sanction any fraudulent behaviors or non-compliance with Job Corps policy and rules. Additionally, before finalizing each year's OMS scores and rankings, Job Corps conducts a comprehensive review of the performance data to ensure its accuracy. Given these procedures, Job Corps has no reason to conclude that performance data has been fabricated, and it is confident that the center performance data used in the closure methodology accurately reflects each center's performance.

One commenter alleged that an individual from an Idaho Job Corps center had sabotaged the Ouachita center so the Idaho center would receive more funding. The Department is not aware of any attempts to sabotage Ouachita's operation.

Three commenters stated that every Job Corps Center, including Ouachita, benefits youth in need and thus should not be closed. The Department's decision to close Ouachita is based on the center's inability to efficiently and effectively deliver the best possible outcomes for youth in need. The Ouachita Center has performed poorly over the last five years, and closing this center will improve Job Corps' ability to provide the highest-quality education and career technical training to its future and current students, including those presently at Ouachita.

Six commenters criticized the methodology that Job Corps developed and applied in determining which center to close. One commenter suggested that the OMS used to determine center ranking is itself flawed. Three commenters were opposed to the two additional closure criteria identified in the March 9, 2016, Notice proposing closure. Because the closure Notice requested comments only on the proposed selection of Ouachita for closure, DOL considers these comments outside the scope of the requested response and will not respond to them here.

Multiple commenters suggested that the waste of other government programs be cut instead of closing the Ouachita Job Corps Center. These comments are outside the scope of the requested response and were therefore not considered.

IV. Job Corps Center Selected for Closure and the Closure Process

Based on its application of the updated closure methodology as described in the March 9, 2016, Notice, and the Department's consideration of the comments received in response to that Notice, DOL has decided to close the Ouachita Job Corps Center.

Job Corps' focus is on managing the performance of its centers in order to best to serve students. Overall funding for the program is not being reduced, nor is the number of students served. By closing low-performing centers, Job Corps can shift limited program dollars to centers that will better prepare students. As Job Corps finalizes the closure of Ouachita, existing students will have the opportunity to complete their training and graduate at Ouachita or transfer to other Job Corps centers to complete their training and graduate. Prospective students in Arkansas will continue to be served by two other Job Corps centers in the state and other centers in the region.

In the coming weeks, DOL will implement the closure process following the center closure requirements in WIOA at section 159(j) and as stipulated in the DOL/USDA Interagency Agreement.

Dated: June 27, 2016.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–15603 Filed 6–30–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent

burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the information collection: "Form CC–4, Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor." The current OMB approval for Form CC–4 expires on August 31, 2017. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 30, 2016.

ADDRESSES: You may submit comments, identified by Control Number 1250–0002, by one of the following methods:

Electronic comments: Through the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Address comments to Debra Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the *www.regulations.gov* Web site or to mail their comments early to ensure that they are timely received. Comments, including any personal information provided, become a matter of public record and will be posted to the *www.regulations.gov* Web site. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (*e.g.* large print, braille, audio recording), upon request, by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contractor Compliance Programs (OFCCP) administers and enforces the three equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA)

These authorities prohibit employment discrimination by Federal contractors and subcontractors and require them to take affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, Federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. Federal contractors and subcontractors are further prohibited from harassing, intimidating, threatening, coercing, or discriminating against individuals who file a complaint, assist or participate in any OFCCP investigation, oppose any discriminatory act or practice, or otherwise exercise their rights protected by OFCCP's laws.

No private right of action exists under the authorities that are enforced by OFCCP, *i.e.,* a private individual may not bring a lawsuit against an employer (or prospective employer) for noncompliance with its contractual obligations enforced by OFCCP. However, any employee or applicant for employment with a federal contractor or subcontractor may file a complaint with OFCCP alleging discrimination or failure to comply with affirmative action obligations. OFCCP encourages such employees and applicants to file their complaints by completing its complaint form ("Form CC–4"). OFCCP investigates the complaint but retains the discretion whether to pursue administrative or judicial enforcement. If a complaint is filed under EO 11246 or Section 503, OFCCP may refer it to the U.S. Equal Employment Opportunity Commission (EEOC).[1] OFCCP investigates all complaints filed under VEVRAA. OFCCP may refer complaints under any law to the Department of Justice (DOJ).

Under E.O. 11246 the authority for collection of complaint information is Section 206(b). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–1.23. Under VEVRAA the authority for collecting complaints information is at 38 U.S.C. 4212(b), and the implementing regulations which specify the content of VEVRAA complaints are found at 41 CFR 60–300.61(b). The statutory authority for collecting complaint information under Section 503 is at 29 U.S.C. 793, and the implementing regulations which specify the content of Section 503 complaints are found at 41 CFR 60–741.61(c). This information collection request covers the recordkeeping and reporting requirements for Form CC–4.

II. *Review Focus:* DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* DOL seeks the approval of the extension of this information collection instrument in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of the three authorities, which it administers.

Type of Review: Renewal.

---

[1] *See,* 41 CFR 60–1.24(a) and 41 CFR 60–741.5.

Agency: Office of Federal Contract Compliance Programs.

Title: Complaint Form CC–4, Complaint Involving Employment Discrimination by Federal Government Contractors or Subcontractors.

OMB Number: 1250–0002.

Agency Number: None.

Affected Public: Business or other for profit, Not-for-profit institutions.

Total Respondents: 753.

Total Annual Responses: 753.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 753.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $61.50.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

SUPPORTING STATEMENT

U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

AGREEMENT APPROVAL PROCESS FOR USE OF COMPLAINT FORM CC–4

OMB No.1250–0002

A. JUSTIFICATION

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity laws:

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA)

E.O. 11246 prohibits federal contractors and subcontractors [2] from discriminating in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, and national origin. It also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, E.O. 11246 prohibits contractors from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. E.O. 11246 applies to contractors holding a federal government contract or subcontract of more than $10,000, or federal government contracts or subcontracts that have, or can reasonably expect to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to federal government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds.

Section 503 prohibits discrimination by covered contractors against individuals on the basis of disability, and requires affirmative action on behalf of qualified individuals with disabilities. Section 503 requirements apply to federal contracts and subcontracts in excess of $15,000.[3]

VEVRAA prohibits employment discrimination against protected veterans, namely disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA requires contractors to take affirmative action to hire, advance in employment and otherwise treat protected veterans without discrimination. VEVRAA requirements apply to federal contracts and subcontracts of $150,000 or more.[4]

Pursuant to the upcoming expiration of OMB No. 1250–0002, this information collection request (ICR) seeks approval of OFCCP's complaint information collection form, titled "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor ("complaint form" or "Form CC–4"). This ICR also seeks approval of the revised complaint form and accompanying instructions page to reflect two amendments to Executive Order 11246: (1) Executive Order 13762, which added "sexual orientation" and "gender identity" as protected bases [5] and (2) Executive Order 13665, which added a basis to protect any applicant or employee who inquires about, discusses, or discloses compensation.[6] There are no substantive changes to the complaint form that impact burden.

1. LEGAL AND ADMINISTRATIVE REQUIREMENTS

No private right of action exists under E.O. 11246, Section 503 or VEVRAA, which means that a private individual may not bring a lawsuit against an employer or prospective employer for noncompliance with its obligations under the authorities enforced by OFCCP. However, any employee or applicant for employment with a contractor may use a complaint form to file a complaint with OFCCP alleging discrimination or failure to comply with affirmative action obligations.[7] OFCCP investigates these complaints and retains the discretion whether to pursue administrative or judicial enforcement.

To file a complaint with OFCCP, a complainant or authorized representative may complete Form CC–4. Alternatively, a complainant may send a letter including the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor and a description of the acts considered to be discriminatory and any other pertinent information.

A complaint alleging discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin must be filed within 180 days from the date of the alleged discrimination, unless the time for filing is extended for good cause shown. Complainants alleging discrimination for discussing, disclosing, or inquiring about pay also have 180 days from the date of the alleged discrimination to file a complaint. If the complaint alleges a violation based on disability or status as a protected veteran, the complaint must be filed within 300 days unless the time for filing is extended for good cause shown. Some examples of what may constitute good cause include: mental or physical incapacity; military deployment, incarceration, or possibly being unaware of the discrimination; misleading information provided by the employer or Agency that prevents or delays filing; or information withheld by the employer that prevents or delays filing.

---

[2] Hereinafter, the use of the term "contractor" includes any contractors and subcontractors covered by the laws enforced by OFCCP. For E.O. 11246, the term includes federally assisted construction contractors.

[3] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

[4] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

[5] *See,* Executive Order 13672, Further Amendments to Executive Order 11478, Equal Employment

Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity, 79 FR 42971 (July 23, 2014).

[6] *See,* Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 70 FR 20749 (April 11, 2014).

[7] Under Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Act of 1974 individuals may file a complaint based on a contractor's failure to comply with its affirmative action obligations. *See,* 41 CFR 60–300.61(a) and 41 CFR 60–741.61(b).

OFCCP may refer complaints filed on bases covered under Executive Order 11246 or Section 503 to the U.S. Equal Employment Opportunity Commission (EEOC) as described in the most recent formal agreement entered into by OFCCP and the EEOC.[8] Complaints filed under Section 503 may be referred to EEOC using the procedures found at 41 CFR 60–742.5(d) and 29 CFR 1641.5(e). OFCCP investigates all complaints filed under VEVRAA.

2. USE OF COLLECTED MATERIAL

The complaint form is used by OFCCP staff as the first step in the initiation of a complaint investigation. If the complaint is timely and appears to raise discrimination or retaliation issues within OFCCP's jurisdiction, then a complaint investigation is initiated. A standardized complaint form helps guide complainants in providing important information about their discrimination allegations and reduces the time it takes OFCCP staff to determine jurisdiction. This form improves efficiency in responding to complainants and in initiating investigations.

3. USE OF INFORMATION TECHNOLOGY

Complainants can download or electronically submit the complaint form via OFCCP's Web site at *http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm.*

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

Information collected on the complaint form is unique to the individual complainant and no duplication is possible.

5. IMPACT ON SMALL BUSINESSES

OFCCP complaints are not filed by business entities but by non-business entities such as individuals or organizations. Therefore, this information collection does not have a significant economic impact on a substantial number of small entities.

6. CONSEQUENCES IF INFORMATION WERE COLLECTED LESS FREQUENTLY

There is no schedule for the collection of this information. Nonetheless, if OFCCP did not collect this information, there could be a detrimental impact on its ability to carry out its mission and enforce the non-discrimination protections and affirmative action obligations in E.O. 11246, Section 503, and VEVRAA.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances for the collection of this information.

8. CONSULTATION OUTSIDE THE AGENCY

OFCCP will address public comments at the end of the 60-day public comment period.

9. GIFTS OR PAYMENTS

OFCCP does not provide gifts or payments to respondents.

10. CONFIDENTIALITY OF INFORMATION

OFCCP complies with the Privacy Act by maintaining confidentiality of the information collected on the complaint form. However, during a complaint investigation, the agency will provide a copy of the complaint form to the contractor and the information contained on the form may be used in the course of settlement negotiations with the contractor and/or in the course of presenting possible disclosure to opposing counsel. Before providing a copy of the complaint form, the agency redacts it to protect confidential information that would easily identify someone other than the complainant. A Privacy Act disclosure statement is included in the instructions for the complaint form, which explains the protections afforded to the information collected on the complaint form and describes how the information may be used in settlement negotiations, verified or disclosed.

11. QUESTIONS OF SENSITIVE NATURE

Although the complaint form does not specifically request sensitive or protected information, the complainant may disclose such information when describing the circumstances that led to filing the complaint. As noted above, a Privacy Act disclosure statement is included in the instructions with the form.

12. INFORMATION COLLECTION HOUR BURDEN

OFCCP received 790 complaints in fiscal year (FY) 2013, 699 complaints in FY 2014, and 769 complaints in FY 2015, which amount to an average of 753 complaints over the last three fiscal years. Based on its experience with complainants and staff, OFCCP estimates that it takes approximately one hour for the completion and submission of the complaint form. OFCCP projects that this information collection will impose a burden of 753 hours to respondents (average rate of 753 annual complaints multiplied by one hour).

OFCCP estimates that the cost of completing the CC–4 is $16,671 (*i.e.,* 753 hours multiplied by $22.14 per hour).[9] OFCCP assumes the maximum cost burden of completing a complaint form by calculating in the cost estimate that all complainants lose an hour of work to file a complaint.

13. INFORMATION COLLECTION COST BURDEN

There are no capital or start-up costs or total operation, maintenance or purchase of services components with filing a complaint. The cost for the complainant is estimated at $0.82 ($0.47 for a stamp to mail the complaint; $0.30 for paper and copying the two sheets of paper; and $0.05 for an envelope). OFCCP receives an annual average of 753 complaints and estimates that approximately 90 percent of complaints are submitted electronically by facsimile or email while the other 10 percent are submitted by mail. Therefore, OFCCP estimates that the 10 percent, or 75 complaints, will cost complainants $61.50 annually (75 complaints multiplied by $0.82).

14. COST TO FEDERAL GOVERNMENT

The cost to the Federal Government (OFCCP) for receiving the forms, reviewing them for jurisdiction and timeliness, and determining their disposition is estimated at $59,645.13 (753 complaints multiplied by a cumulative labor cost of $79.21 per complaint).

The Federal labor cost reflects the 2.25 hours it takes OFCCP staff to process the form and includes one hour for an administrative support staff (GS–6) to review the complaint and check jurisdiction, one hour for a professional staff (GS–13) to verify the jurisdiction and prepare correspondence, and 0.25 hours for a manager (GS–14) to review and sign the documents. This cost was determined by surveying OFCCP's regional offices on the amount of time it takes to process a complaint. The calculation for the labor costs are detailed below.

---

[8] OFCCP has a Memorandum of Understanding with EEOC that includes coordinated processing of E.O. 11246 complaints, "Coordination of Functions; Memorandum of Understanding," 76 FR 71029 (Nov. 16, 2011). *See also,* 41 CFR 60–1.24(a).

[9] OFCCP used the average amount that private industry employers spend in employee wages and salaries as reported in *Employer Costs for Employee Compensation,* December 2015, United States Department of Labor, Bureau of Labor Statistics, Table 5, available at *http://www.bls.gov/schedule/archives/ecec_nr.htm.*

Grade/step	Wage rate[10]	Time (hours)	Total (wage rate × hours)
6/10	$19.62	1	$19.62
13/10	46.00	1	46.00
14/10	54.36	0.25	13.59
Cumulative labor cost per complaint			79.21

15. PROGRAM CHANGES OR BURDEN ADJUSTMENTS

Based on the three-year average of complaints received, OFCCP expects to process more complaints (753) than under the previous approved ICR (747). The small increase in burden hours is detailed in the chart below.

	Responses	Burden hours
Current	747	747
Proposed	753	753
Adjustment increase	+6	+6

16. PUBLICATION OF DATA FOR STATISTICAL USE

OFCCP will not publish the data collected on the CC–4.

17. APPROVAL NOT TO DISPLAY THE EXPIRATION DATE

OFCCP is not seeking approval to not display the expiration date in this information request.

18. EXCEPTION TO THE CERTIFICATION STATEMENT

OFCCP is not seeking exceptions to the certification statement in this information request.

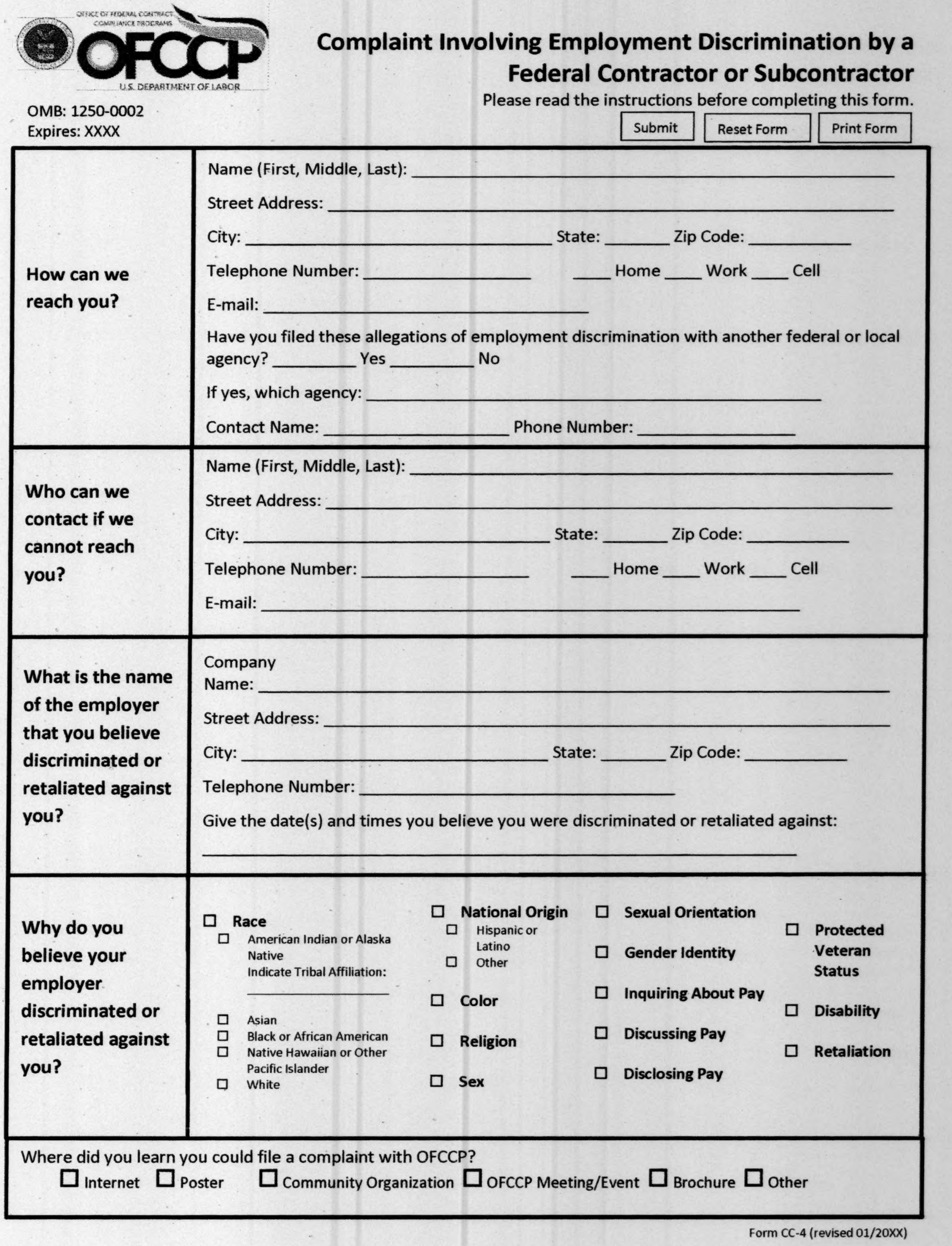
B. STATISTICAL METHODS

This information collection does not use statistical methods.

BILLING CODE 4510–CM–C

---

[10] Average hourly rates are from the Office of Personnel Management (OPM) 2016 General Schedule Salary Table.



OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
OFCCP
U.S. DEPARTMENT OF LABOR

OMB: 1250-0002
Expires: XXXX

Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor

Please read the instructions before completing this form.

Submit
Reset Form
Print Form

How can we reach you?

Name (First, Middle, Last): ______
Street Address: ______
City: ______ State: ______ Zip Code: ______
Telephone Number: ______ ____ Home ____ Work ____ Cell
E-mail: ______
Have you filed these allegations of employment discrimination with another federal or local agency? ______ Yes ______ No
If yes, which agency: ______
Contact Name: ______ Phone Number: ______

Who can we contact if we cannot reach you?

Name (First, Middle, Last): ______
Street Address: ______
City: ______ State: ______ Zip Code: ______
Telephone Number: ______ ____ Home ____ Work ____ Cell
E-mail: ______

What is the name of the employer that you believe discriminated or retaliated against you?

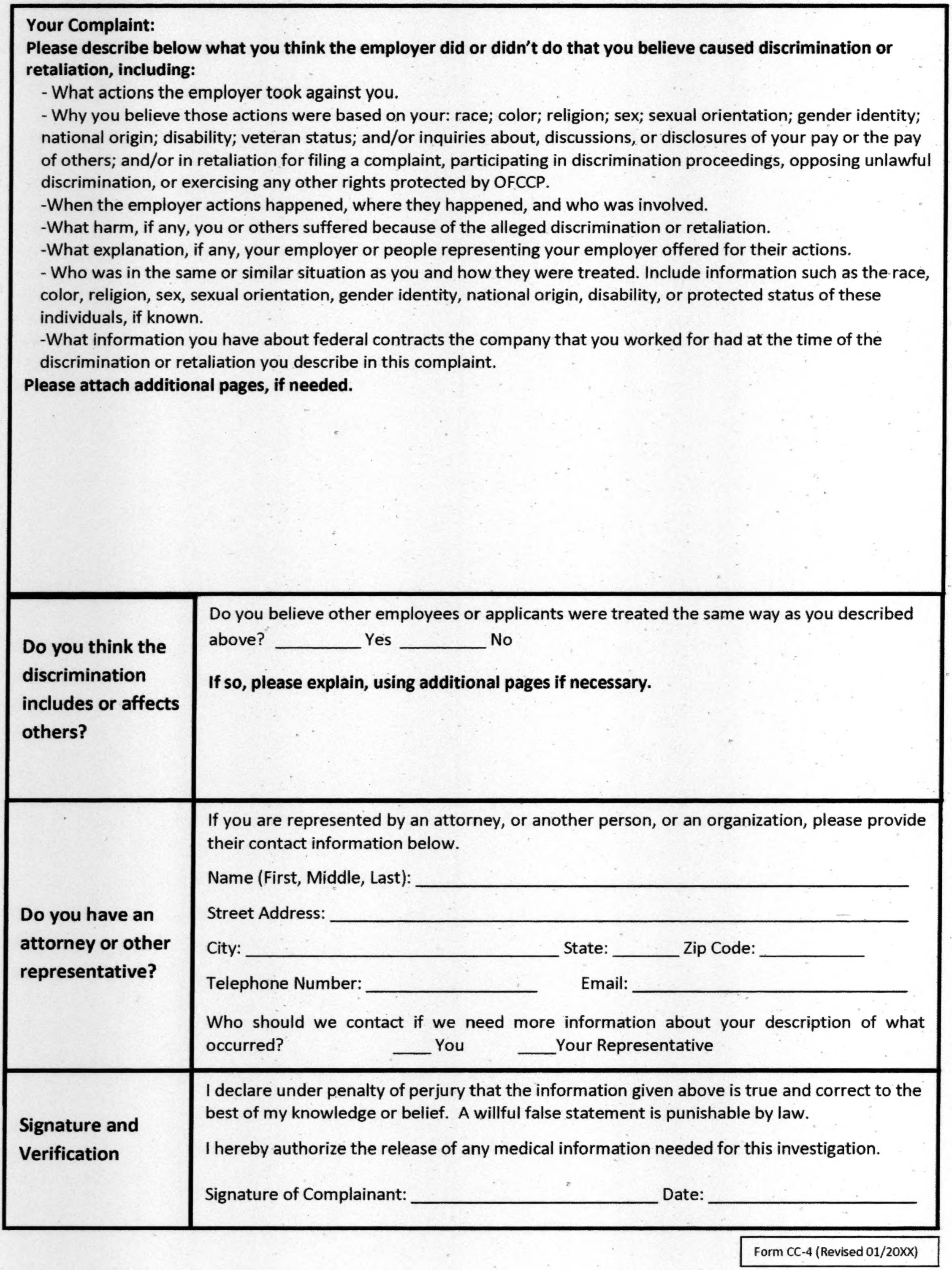
Company Name: ______
Street Address: ______
City: ______ State: ______ Zip Code: ______
Telephone Number: ______
Give the date(s) and times you believe you were discriminated or retaliated against:
______

Why do you believe your employer discriminated or retaliated against you?

- ☐ **Race**
  - ☐ American Indian or Alaska Native
    Indicate Tribal Affiliation: ______
  - ☐ Asian
  - ☐ Black or African American
  - ☐ Native Hawaiian or Other Pacific Islander
  - ☐ White
- ☐ **National Origin**
  - ☐ Hispanic or Latino
  - ☐ Other
- ☐ **Color**
- ☐ **Religion**
- ☐ **Sex**
- ☐ **Sexual Orientation**
- ☐ **Gender Identity**
- ☐ **Inquiring About Pay**
- ☐ **Discussing Pay**
- ☐ **Disclosing Pay**
- ☐ **Protected Veteran Status**
- ☐ **Disability**
- ☐ **Retaliation**

Where did you learn you could file a complaint with OFCCP?
☐ Internet ☐ Poster ☐ Community Organization ☐ OFCCP Meeting/Event ☐ Brochure ☐ Other

Form CC-4 (revised 01/20XX)



Your Complaint:
Please describe below what you think the employer did or didn't do that you believe caused discrimination or retaliation, including:

- What actions the employer took against you.
- Why you believe those actions were based on your: race; color; religion; sex; sexual orientation; gender identity; national origin; disability; veteran status; and/or inquiries about, discussions, or disclosures of your pay or the pay of others; and/or in retaliation for filing a complaint, participating in discrimination proceedings, opposing unlawful discrimination, or exercising any other rights protected by OFCCP.
- When the employer actions happened, where they happened, and who was involved.
- What harm, if any, you or others suffered because of the alleged discrimination or retaliation.
- What explanation, if any, your employer or people representing your employer offered for their actions.
- Who was in the same or similar situation as you and how they were treated. Include information such as the race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or protected status of these individuals, if known.
- What information you have about federal contracts the company that you worked for had at the time of the discrimination or retaliation you describe in this complaint.

Please attach additional pages, if needed.

Do you think the discrimination includes or affects others?

Do you believe other employees or applicants were treated the same way as you described above? _________ Yes _________ No

If so, please explain, using additional pages if necessary.

Do you have an attorney or other representative?

If you are represented by an attorney, or another person, or an organization, please provide their contact information below.

Name (First, Middle, Last): ______________________________

Street Address: ______________________________

City: ______________________ State: _______ Zip Code: ___________

Telephone Number: _________________ Email: ______________________

Who should we contact if we need more information about your description of what occurred? ____ You ____Your Representative

Signature and Verification

I declare under penalty of perjury that the information given above is true and correct to the best of my knowledge or belief. A willful false statement is punishable by law.

I hereby authorize the release of any medical information needed for this investigation.

Signature of Complainant: ________________________ Date: ____________________

Form CC-4 (Revised 01/20XX)

Instruction Sheet

Use this form to file a complaint against an employer for violating any of the three laws the Office of Federal Contract Compliance Programs (OFCCP) enforces:

- Executive Order 11246, as amended;
- Section 503 of the Rehabilitation Act of 1973, as amended; and the
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

These laws make it illegal for companies doing business with the Federal Government to discriminate against job applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability status and status as a protected veteran. This includes discrimination in pay and other forms of compensation. Executive Order 11246, as amended, also prohibits federal contractors from discriminating against applicants and employees for inquiring about, discussing, or disclosing compensation.

In addition, it is illegal for these companies to retaliate or otherwise take employment actions that negatively affect job applicants and employees because they filed a complaint, opposed acts or practices made unlawful by OFCCP's laws, or provided information or assistance during a compliance evaluation or complaint investigation. Retaliatory actions include any intimidation, threat, coercion or discrimination.

General Instructions:

Print or type the information when filling in the form. Tell us what happened, why you believe it was discrimination or retaliation, and who took the actions you described. Also, explain where and when these things happened, who saw it, and who may have information about what happened to you. Your signature is required on the complaint form, and if it is not on the form when you submit it, we will ask you to sign it.

The form includes a place for you to select the reason why you believe your employer discriminated or retaliated against you. If you believe you may have been discriminated or retaliated against for multiple reasons, such as race and sex, select all the protected bases that apply.

When describing what happened, tell us how it changed your work. For example, let us know if it caused you not to be hired for a job; caused you to be fired, laid off, demoted, or denied a promotion; or caused you to lose changed. You may have also been paid less than others doing the same or similar work. We also want to know if what happened involved training, pregnancy leave, harassment, accommodation for a disability or for religious observances, or segregation of facilities.

You can use a separate piece of paper if you need more space to describe what happened to you. Remember to attach the piece of paper to the complaint form when you are done.

If you are filing a complaint of discrimination because of your veteran status, remember to attach your Certificate of Release or Discharge from Active Duty (also known as DD Form 214). If one is not provided, we will ask you to provide one later. There are several categories of veterans protected by VEVRAA: disabled veterans, veterans separated from service for no more than three years, active duty wartime or campaign badge veterans, and armed forces service medal veterans. For more details on these categories, visit OFCCP's Web site at *http://www.dol.gov/ofccp/posters/Infographics/ProtectedVet.htm.*

Where to file the complaint?

You should send the completed form to the OFCCP regional office that covers the state where the alleged discrimination happened. Send OFCCP your form by U.S. mail, fax, or email. A list of regional offices and the states that each office covers can be found on the OFCCP Web site at: *http://www.dol.gov/ofccp/contacts/regkeyp.htm.*

When to file a complaint?

Complaints based on your race, color, religion, sex, sexual orientation, gender identity, or national origin, must be filed within 180 days of the action(s) taken by your employer that you think was either discrimination or retaliation. The same 180-day time frame applies to pay transparency complaints alleging discrimination for discussing, disclosing, or inquiring about pay.

Complaints based on your disability or status as a protected veteran must be filed within 300 days of the action(s) taken by your employer that you think was either discrimination or retaliation.

Privacy Act Statement

The collection of information using this form is authorized by the laws OFCCP enforces, Title VII of the Civil Rights Act of 1964 (Title VII), as amended, and Title I of the Americans with Disabilities Act of 1990 (ADA), as amended. OFCCP uses this information to process complaints and conduct investigations of alleged violations of these employment discrimination laws.

complaint to the employer against whom it is filed, and when the matters alleged are covered by Title VII and/or the ADA, to the U.S. Equal Employment Opportunity Commission (EEOC). The information collected may be: 1) verified with others who may have knowledge relevant to the complaint; 2) used in settlement negotiations with the employer or in the course of presenting evidence at a hearing; or 3) disclosed to other agencies with jurisdiction over the complaint.

Providing this information is voluntary; however, failure to provide the information may delay or prevent OFCCP from investigating your complaint and, for matters covered by Title VII or the ADA, may affect your right to sue under those laws.

Public Burden Statement

The estimated time to complete this form is 1 hour, including time for reviewing instructions, filling out the form and sending it to OFCCP. Please note that you are not required to respond to this collection of information unless it displays a currently valid OMB Control Number.

If you have comments regarding the estimated burden or any other aspect of this complaint form, including suggestions for reducing the burden, send them to the OFCCP Policy Division (1250–0002), 200 Constitution Avenue NW., Room C3325, Washington, DC 20210. Please do not send the completed complaint form to this address.

[FR Doc. 2016–15671 Filed 6–30–16; 8:45 am]

BILLING CODE 4510–CM–P

LEGAL SERVICES CORPORATION

Notice and Request for Comments—Final Guidelines for Automated Financial-Eligibility Screening

AGENCY: Legal Services Corporation.

ACTION: Notice; request for comments.

SUMMARY: The Legal Services Corporation is publishing for public comment a proposed program letter addressing standards for automated systems that LSC grantees might use to gather financial-eligibility information from applicants for legal services and to make financial-eligibility decisions for those applicants.

DATES: The program letter will be effective August 10, 2016. Written comments will be accepted until August 1, 2016.

ADDRESSES: Written comments must be submitted to Mark Freedman, Senior

Services Corporation, 3333 K St. NW., Washington, DC 20007–3522; 202–337–6519 (fax); *mfreedman@lsc.gov.* LSC prefers electronic submissions via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation ("LSC" or "Corporation") was established by the United States Congress "for the purpose of providing financial support for legal assistance in noncriminal matters or proceedings to persons financially unable to afford such assistance." 42 U.S.C. 2996b(a). LSC performs this function primarily by funding civil legal aid programs providing legal services to low-income persons throughout the United States and its possessions and territories in geographic areas determined by LSC. Each LSC funding recipient must screen all applicants for LSC-funded legal assistance to determine if the applicant's household meets the recipient's financial eligibility requirements for income and assets, which themselves must comply with the LSC financial eligibility requirements set forth at 45 CFR part 1611.

On March 26, 2012, LSC published for comment a draft program letter discussing minimum screening requirements for LSC recipients when determining financial eligibility of applicants based on information collected through automated online intake systems. 77 FR 17529. The draft program letter and comments received are in the "Closed Matters for Comment" section of LSC's Web site at: *http://www.lsc.gov/about-lsc/matters-comment* under "Draft Financial-Screening Program Letter".

LSC received eight comments, all of which encouraged LSC to provide guidance on this topic. Four comments recommended that LSC not require a person at the grantee to make a direct follow-up contact regarding financial information for every applicant using an automated intake system. Three comments suggested clarifying who may provide financial eligibility information for an applicant through an automated system, and to include representatives of applicants, such as family members. One comment recommended separate requirements for applicants to be served by private attorneys volunteering with the grantee or providing reduced-fee services. One comment said that the proposed program letter was complete and adequate to explain the requirements.

Based on the comments and additional internal review, LSC has substantially revised the program letter to: (1) Eliminate the requirement for a follow-up contact by a person in all situations, (2) clarify that applicants or their authorized representatives may provide the financial information, and (3) provide guidelines for when the automated system may make a financial eligibility determination without review by a person. In all cases, the grantee must maintain clear and accessible records regarding the structure and operation of the system, maintain all information required for client-eligibility determinations, and engage in ongoing review of the system for improvements. Furthermore, grantees must design and operate these systems so as to maintain access to services for people with disabilities.

The revised program letter is available on the LSC Web site at *http://www.lsc.gov/about-lsc/matters-comment.* LSC will accept comments on the notice for thirty days and, if the comments warrant, will issue an additional notice modifying the proposed program letter and adjusting the effective date. In the absence of any such notice, the revised program letter will be effective forty days after publication of this notice in the **Federal Register**.

Dated: June 27, 2016.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2016–15578 Filed 6–30–16; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–037]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by August 1, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0004, 1 item, 1 temporary item). Records relating to county committee elections, including ballots, correspondence, and eligible voter lists.

2. Department of Agriculture, Office of the Ombudsperson (DAA–0016–2016–0002, 9 items, 8 temporary items). Monthly activity reports, calendars, speeches and presentations, inquiries and resolution files, statistical tracking records, routine congressional correspondence, and internal program management files. Proposed for permanent retention are official marketing publications and annual reports.

3. Department of the Army, Agency-wide (DAA–AU–2016–0004, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to engineering drawings and technical manuals.

4. Department of the Army, Agency-wide (DAA–AU–2016–0028, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to personnel, manpower, and budget.

5. Department of the Army, Agency-wide (DAA–AU–2016–0031, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to hazardous substances used for equipment maintenance purposes.

6. Department of the Army, Agency-wide (DAA–AU–2016–0033, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to the recruitment of foreign nationals for civilian employment.

7. Department of the Army, Agency-wide (DAA–AU–2016–0034, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to the planning and execution of personnel mobilization.

8. Department of the Army, Agency-wide (DAA–AU–2016–0035, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to materiel nomenclature requests.

9. Department of Commerce, Bureau of the Census (DAA–0029–2016–0003, 4 items, 3 temporary items). Administrative subject files, reading files, and background and working papers relating to reports and presentations maintained among program subject files. Proposed for permanent retention are program subject files relating to the operations, programs, and plans of the agency.

10. Department of Defense, Defense Health Agency (DAA–0330–2016–0012, 1 item, 1 temporary item). Master files of an electronic information system used to manage military and other patients who are on blood-thinning medication.

11. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0008, 5 items, 2 temporary items). Records of the Assistant Secretary and Executive Secretariat, including routine program correspondence and working files. Proposed for permanent retention are briefing books, calendars, speeches, policy decision papers, and official correspondence.

12. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0014, 11 items, 6 temporary items). Routine correspondence, working papers and background materials, conference records, routine standard operating procedure records, mass communication records, and routine reports. Proposed for permanent retention are publications, photographs, conference records of high-level officials, and official correspondence of high-level officials.

13. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2016–0002, 14 items, 14 temporary items). Records related to information management compliance including complaint and privacy incident files, compliance review files, disclosure advice files, rulemaking files, information sharing agreement files, and related materials.

14. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0013, 1 item, 1 temporary item). Master files of an electronic information system used to track and process applications, petitions, and requests for benefits and services.

15. Department of the Navy, United States Marine Corps (DAA–0127–2014–0003, 1 item, 1 temporary item). Master files of an electronic information system used to manage, analyze, and disseminate topographic imagery for commands in the field.

16. Department of the Navy, United States Marine Corps (DAA–0127–2014–0024, 2 items, 1 temporary item). Master files of an electronic information system used to manage digital imagery not of historical importance. Proposed for permanent retention are significant images of historical importance.

17. Department of Transportation, National Highway Transportation Safety Administration (DAA–0416–2014–0001, 1 item, 1 temporary item). Records related to cognitive testing performed in preparation for a motor vehicle occupant safety survey.

18. Federal Communications Commission, International Bureau (DAA–0173–2016–0010, 3 items, 3 temporary items). Overseas telecommunications data submitted by carriers.

19. Federal Communications Commission, Office of Engineering and

Technology (DAA–0173–2016–0003, 2 items, 2 temporary items). Applications submitted by the public, related documents, and licenses granted for experimental radio testing and research licenses.

20. Federal Communications Commission, Wireline Competition Bureau (DAA–0173–2016–0006, 1 item, 1 temporary item). Records related to wireless provider traffic studies.

21. National Archives and Records Administration, Office of Government Information Services (DAA–0064–2016–0001, 4 items, 2 temporary items). Records created in helping resolve Freedom of Information Act disputes and other mission-related functions. Proposed for permanent retention are compliance assessment final reports and the annual report to Congress.

22. National Archives and Records Administration, Research Services (N2–59–16–1, 2 items, 2 temporary items). Records of the Department of State related to regulations and executive orders which are duplicative of accessioned records found in other record groups. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

23. Peace Corps, Headquarters (DAA–0490–2016–0002, 3 items, 3 temporary items). Records related to training materials created for volunteers and post staff.

24. Reconstruction Finance Corporation, Metals Reserve Company (N1–234–12–2, 42 items, 38 temporary items). Included are administrative records and records related to production, pricing, contracts, transportation, and stockpiling and warehousing of metal ores. Proposed for permanent retention are Texas City, Texas, plant blueprints and 1947 disaster subject files, and records related to the Premium Price Plan.

25. Reconstruction Finance Corporation, Rubber Reserve Corporation (N1–234–12–3, 14 items, 11 temporary items). Records include administrative files, transportation documentation, freight claims, payment information, service order contracts, cooperative agreements, research contracts, lease agreements, sales reports, and purchase agreements. Proposed for permanent retention are synthetic rubber program records, annual operational reports, and Corporation agreements with private companies.

26. Securities and Exchange Commission, Office of Human Resources (DAA–0266–2016–0010, 4 items, 4 temporary items). Records related to agency-sponsored employee training.

27. Securities and Exchange Commission, Office of Minority and Women Inclusion (DAA–0266–2016–0011, 7 items, 7 temporary items). Records related to agency actions to promote, monitor, and assess workplace diversity and inclusion.

28. Selective Service System, Agency-wide (DAA–0147–2015–0004, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to the registration and compliance of individuals under the Selective Service Act.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–15697 Filed 6–30–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2016–038]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App) and the second United States Open Government National Action Plan (NAP) released on December 5, 2013, NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be July 21, 2016, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by 5:00 p.m. EDT on July 19, 2016.

ADDRESSES: The meeting will be at the National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW., William G. McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5783, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: You may find all meeting materials at *https://ogis.archives.gov/foia-advisory-committee/2016-2018-term/Meetings.htm.* This will be the first meeting of the new committee term. The purpose of this meeting will be to introduce new members, choose meeting dates, brainstorm topics for subcommittees, and have Government members receive ethics training.

Procedures: The meeting is open to the public. Due to access procedures, you must register in advance if you wish to attend the meeting. You will also go through security screening when you enter the building. Registration for the meeting will go live via Eventbrite on June 29, 2016, at 10:00 a.m. EDT. To register for the meeting, please do so at this Eventbrite link: *http://www.eventbrite.com/o/office-of-government-information-services-7515239993.*

This program will be live streamed on the US National Archives' YouTube channel, *https://www.youtube.com/user/usnationalarchives/playlists.* The webcast will include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202–741–5783. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kate Gastner at the phone number, mailing address, or email address listed above.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2016–15667 Filed 6–30–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Privacy of Consumer Financial Information Recordkeeping and Disclosure Requirements Under Gramm-Leach-Bliley Act and Regulation P, Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the submission for reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub.

L. 104–13, 44 U.S.C. Chapter 35). NCUA is soliciting comment on the reinstatement of the information collection described below.

DATES: Comments should be received on or before August 30, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–837–2861; or Email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

Title V, Subtitle A of the Gramm-Leach-Bliley Act (Act), Public Law 106–102, governs the treatment of nonpublic personal information about consumers by financial institutions. Section 502 of the Act, subject to certain exceptions, prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided the consumer has not elected to opt out of the disclosure. Section 503 of the Act requires a financial institution to provide notice of its privacy policies and practices to its customers. Section 504 of the Act granted rulemaking authority for the privacy provisions of the Act to be shared by eight Federal agencies: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). Each of the agencies issued rules (which were consistent and comparable) to implement the Act's privacy provisions.[1]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) amended a number of consumer financial protection laws, including the Act. Among other changes, the DFA transferred rulemaking authority for most of Subtitle A of Title V of the Act, with respect to financial institutions described in section 504(a)(1)(A) of the Act, from FRB, FDIC, OCC, OTS, and NCUA to the Consumer Financial Protection Bureau (CFPB). Pursuant to the DFA and the Act, as amended, the CFPB promulgated Regulation P, 12 CFR 1016, to implement those privacy provisions of the Act for which CFPB has rulemaking authority.

Regulation P implements the requirements of the Act to provide consumers with financial institutions' privacy policies and practices, as well as describes when the consumer's information may be shared with nonaffiliated third parties, and provides a method for consumers to prevent disclosure of their information to nonaffiliated third parties by opting out of that disclosure. Regulation P details the specifics of how the Act should be implemented, which companies and situations this applies to, and the method of delivering the information to consumers.

Regulation P includes model forms that can be used to comply with the disclosure requirements of the Act and Regulation P, although the use of the model forms is not required. *See* Appendix to Regulation P.

The collection of information pursuant to covers the development of privacy policies by the financial institutions and the dissemination of those policies to their customers upon starting a customer relationship, annually for existing customers, and in the event of any covered changes to the privacy policy. This collection also accounts for the burden to customers who choose to exercise their opt-out rights to prevent disclosure of financial information to nonaffiliated parties.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

II. Data

Title: Privacy of Consumer Financial Information Recordkeeping and Disclosure Requirements Under the Gramm-Leach-Bliley Act and Regulation P, 12 CFR 1016.

OMB Number: 3133–0163.

Type of Review: Reinstatement with change of a previously approved collection.

Description: Regulation P (12 CFR 1016) requires credit unions to disclose its privacy policies to customers as well as offer customers a reasonable opportunity to opt out—in whole or in part—of those policies to further restrict the release of their personal financial information to nonaffiliated third parties. Credit unions are required to provide an initial privacy notice to customers that is clear and conspicuous, an annual notice of the privacy policies and practices of the institution, a revised notice to customers if triggered by specific changes to the existing policy, and a notice of the right of the customer to opt out of the institution's information sharing practices. Consumers who choose to exercise their opt-out right document this choice by returning an opt-out form or other permissible method.

Respondents: Federally-insured credit unions and any credit union member who chooses to exercise opt-out rights.

Estimated Number of Respondents: Federally-insured credit unions: Initial notice, 73; annual and revised notices, 5,954; opt-out notice, 5,954. Members who opt-out, 1,140,000.

Frequency of Response: Annually for most credit unions for both annual notice and annual notification of opt-out rights. Once for credit union members choosing to opt-out.

Estimated Burden Hours per Response: Federally-insured credit unions: Initial notice, 80 hours; annual and revised notice, 8 hours; opt-out notice, 8 hours. Members who opt-out, 15 minutes.

Estimated Total Annual Burden Hours: 386,104.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 22, 2016.

Dated: June 28, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–15651 Filed 6–30–16; 8:45 am]

BILLING CODE 7535–01–P

---

[1] 12 CFR 216 (FRB); 12 CFR 332 (FDIC); 12 CFR 40 (OCC); 12 CFR 716 and 741.220 (NCUA); 16 CFR 313 (FTC); 17 CFR 248 (SEC); 17 CFR 160 (CFTC).

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0077]

Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final ITAAC hearing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has finalized generic procedures for conducting hearings on whether acceptance criteria in combined licenses are met. These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) included in the combined license for a nuclear reactor. Reactor operation may commence only if and after the NRC finds that these acceptance criteria are met. The Commission intends to use the final generic ITAAC hearing procedures (with appropriate modifications) in case-specific orders to govern hearings on conformance with the acceptance criteria.

DATES: These final procedures are effective July 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2014–0077 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0077. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9115, email: *Michael.Spencer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Public Comments and Public Meetings
III. Differences Between the Proposed Procedures and the Final Procedures
  A. Early Publication of the Notice of Intended Operation
  B. Licensee Hearing Requests
  C. Deadlines and Hearing Schedule for Hearing Requests, Intervention Petitions, New or Amended Contentions, and Claims of Incompleteness After the Deadline
  D. Claims of Incompleteness
  E. Legal Contentions and Briefing of Legal Issues
  F. Motions for Extension of Time
  G. Presiding Officer for the Hearing
  H. Evidentiary Hearing Schedule
  I. Criteria for Deciding Between the Track 1 and Track 2 Procedures
  K. APA Section 554 Provision on Eliminating the Need for a Hearing
  L. Contraction of Fuel Load Schedule
  M. Pre-Clearance Process for Access to SGI
  N. Development of Protective Order Templates for Access to SUNSI and SGI
  O. Presiding Officer for Review of SUNSI–SGI Access Determinations and Related Matters
  P. Mandatory Disclosures
  Q. Notifications of Relevant New Developments in the Proceeding
  R. Proposed Findings of Fact and Conclusions of Law
  S. Motions and Petitions for Reconsideration and Motions for Clarification
  T. Interlocutory Review
  U. Reopening the Record
  V. Interim Operation
  W. Submission, Filing, and Service of Documents
  X. Initial Decision Becoming Final Action of the Commission
IV. Previously Established Law, Regulation, and Policy Governing ITAAC Hearings
  A. Hearing Request
  B. Interim Operation
  C. Initial Decision
V. General Approach to ITAAC Hearing Procedure Development
  A. Use of Existing Part 2 Procedures
  B. Choice of Presiding Officer To Conduct an Evidentiary Hearing
  C. Schedule
  D. Hearing Formats
VI. Final General ITAAC Hearing Procedures
  A. Notice of Intended Operation
  1. Prima Facie Showing
  2. Claims of Incompleteness
  3. Interim Operation
  4. Hearing Requests, Intervention Petitions, and Motions for Leave To File New or Amended Contentions or Claims of Incompleteness After the Original Deadline
  5. SUNSI–SGI Access Order
  6. Filing of Documents and Time Computation
  7. Motions
  8. Notifications Regarding Relevant New Developments in the Proceeding
  9. Stays
  10. Interlocutory Review
  11. Licensee Hearing Requests
  B. Procedures for Hearings Involving Testimony
  1. Schedule and Format for Hearings Involving Witness Testimony
  2. Mandatory Disclosures/Role of the NRC Staff
  3. Certified Questions/Referred Rulings
  C. Procedures for Hearings Not Involving Testimony (Legal Contentions)
  D. Procedures for Resolving Claims of Incompleteness
VII. Availability of Documents
VIII. Plain Language Writing

I. Introduction

The NRC promulgated part 52 of title 10 of the *Code of Federal Regulations* (CFR) on April 18, 1989 (54 FR 15372), to reform the licensing process for future nuclear power plant applicants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits (ESPs), standard design certifications, and combined licenses (COLs). These were alternatives to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 are intended to facilitate early resolution of safety and environmental issues and to enhance the safety and reliability of nuclear power plants through standardization. The centerpiece of 10 CFR part 52 is the COL, which resolves the safety and environmental issues associated with construction and operation before construction begins. Applicants for a COL are able to reference other NRC approvals (*e.g.,* ESPs and design certifications) that resolve a number of safety and environmental issues that would otherwise need to be resolved in the COL proceeding.

After the promulgation of 10 CFR part 52 in 1989, the Energy Policy Act of 1992 (EPAct), Public Law 102–486, added several provisions to the Atomic Energy Act of 1954, as amended (AEA), regarding the COL process, including provisions on ITAAC. The inclusion of ITAAC in the COL is governed by Section 185b. of the AEA, and hearings on conformance with the acceptance criteria in the ITAAC are governed by Section 189a.(1)(B) of the AEA. On December 23, 1992 (57 FR 60975), the Commission revised 10 CFR part 52 to conform to the EPAct. Further additions and revisions to the regulations governing hearings on conformance with the acceptance criteria were made in the final rule entitled "Licenses, Certifications, and Approvals for Nuclear Power Plants" (2007 part 52 Rule) (72 FR 49352; August 28, 2007), and in the final rule entitled "Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria" (ITAAC Maintenance Rule) (77 FR 51880; August 28, 2012).

The ITAAC are an essential feature of 10 CFR part 52. To issue a COL, the NRC must make a predictive finding that the facility *will be* constructed and operated in accordance with the license, the AEA, and NRC rules and regulations. The ITAAC are used to ensure that, prior to facility operation, the facility *has been* constructed and will be operated in accordance with the license, the AEA, and NRC rules and regulations. The ITAAC are verification requirements that include both the means of verification (the inspections, tests, or analyses) and the standards that must be satisfied (the acceptance criteria). Facility operation cannot commence until the NRC finds, under 10 CFR 52.103(g), that all acceptance criteria in the COL are met. Consistent with the NRC's historical understanding, facility operation begins with the loading of fuel into the reactor. After the NRC finds that the acceptance criteria are met, 10 CFR 52.103(h) provides that the ITAAC cease to be requirements either for the licensee or for license renewal. All of the ITAAC for a facility, including those reviewed and approved as part of an ESP or a design certification, are included in an appendix to the COL.[1]

As the licensee completes the construction of structures, systems, and components (SSCs) subject to ITAAC, the licensee will perform the inspections, tests, and analyses for these SSCs and document the results onsite. The NRC inspectors will inspect a sample of the ITAAC to ensure that the ITAAC are successfully completed.[2] This sample is chosen using a comprehensive selection process to provide confidence that both the ITAAC that have been directly inspected and the ITAAC that have not been directly inspected are successfully completed.

For every ITAAC, the licensee is required by 10 CFR 52.99(c)(1) to submit an ITAAC closure notification to the NRC explaining the licensee's basis for concluding that the inspections, tests, and analyses have been performed and that the acceptance criteria are met. These ITAAC closure notifications are submitted throughout construction as ITAAC are completed. Licensees are expected to "maintain" the successful completion of ITAAC after the submission of an ITAAC closure notification. If an event subsequent to the submission of an ITAAC closure notification materially alters the basis for determining that the inspections, tests, and analyses were successfully performed or that the acceptance criteria are met, then the licensee is required by 10 CFR 52.99(c)(2) to submit an ITAAC post-closure notification documenting its successful resolution of the issue. The licensee must also notify the NRC when all ITAAC are complete as required by 10 CFR 52.99(c)(4). These notifications, together with the results of the NRC's inspection process, serve as the basis for the NRC's 10 CFR 52.103(g) finding on whether the acceptance criteria in the COL are met.

One other required notification, the uncompleted ITAAC notification, must be submitted at least 225 days before scheduled initial fuel load and must describe the licensee's plans to complete the ITAAC that have not yet been completed. 10 CFR 52.99(c)(3). Specifically, 10 CFR 52.99(c)(3) requires the licensee to provide sufficient information, including the specific procedures and analytical methods to be used in performing the ITAAC, to demonstrate that the uncompleted inspections, tests, and analyses will be performed and the corresponding acceptance criteria will be met. When the uncompleted ITAAC are later completed, the licensee must submit an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1).

As the Commission stated in the ITAAC Maintenance Rule (77 FR at 51887), the notifications required by 10 CFR 52.99(c) serve the dual purposes of ensuring (1) that the NRC has sufficient information to complete all of the activities necessary for it to find that the acceptance criteria are met, and (2) that interested persons will have access to information on both completed and uncompleted ITAAC sufficient to address the AEA threshold for requesting a hearing under Section 189a.(1)(B) on conformance with the acceptance criteria. With respect to uncompleted ITAAC, the Commission stated in the 2007 part 52 Rule (72 FR at 49367) that it "expects that any contentions submitted by prospective parties regarding uncompleted ITAAC would focus on any inadequacies of the specific procedures and analytical methods described by the licensee" in its uncompleted ITAAC notification.

The NRC regulations that directly relate to the ITAAC hearing process are in 10 CFR 2.105, 2.309, 2.310, 2.340, 2.341, 51.108, and 52.103. Because 10 CFR 52.103 establishes the most important requirements regarding operation under a combined license, including basic aspects of the associated hearing process, NRC regulations often refer to the ITAAC hearing process as a "proceeding under 10 CFR 52.103." Additional regulations governing the ITAAC hearing process are in the design certification rules, which are included as appendices to 10 CFR part 52, for example, "Design Certification Rule for the AP1000 Design," 10 CFR part 52, appendix D, paragraphs VI, VIII.B.5.g, and VIII.C.5. In addition, the Commission announced several policy decisions regarding the conduct of ITAAC hearings in its final policy statement entitled "Conduct of New Reactor Licensing Proceedings" (2008 Policy Statement) (73 FR 20963; April 17, 2008).

While NRC regulations address certain aspects of the ITAAC hearing process, they do not provide detailed procedures for the conduct of an ITAAC hearing. As provided by 10 CFR 2.310(j), proceedings on a Commission finding under 10 CFR 52.103(c) and (g) shall be conducted in accordance with the procedures designated by the Commission in each proceeding. The use of case-specific orders to impose case-specific hearing procedures reflects the flexibility afforded to the NRC by Section 189a.(1)(B)(iv) of the AEA, which provides the NRC with the discretion to determine the appropriate procedures for an ITAAC hearing, whether formal or informal.[3] A case-specific approach has the advantage of allowing the NRC to conduct the proceeding more efficiently by tailoring the procedures to the specific matters in controversy. In addition, the NRC can more swiftly implement lessons learned from the first ITAAC hearings to future proceedings. This approach is particularly beneficial given that this is a first-of-a-kind hearing process.

The NRC recognized, however, that the predictability and efficiency of the

---

[1] *See* (*e.g.*, Vogtle Unit 3 Combined License, Appendix C (ADAMS Accession No. ML112991102)). There are 875 ITAAC in the Vogtle Unit 3 COL.

[2] In addition to ITAAC for SSCs, there are ITAAC related to the emergency preparedness program and physical security hardware. The NRC will inspect the performance of all emergency preparedness program and physical security hardware ITAAC.

[3] Thus, ITAAC hearings are not required to comply with the Administrative Procedure Act (APA) procedures for formal "on the record" hearings. *See* 5 U.S.C. 554(a).

ITAAC hearing process would be greatly enhanced by the development, to the extent possible, of generalized procedures that can be quickly and easily adapted to the specific features of individual proceedings. Thus, the Commission, in its July 19, 2013, staff requirements memorandum (SRM) on SECY–13–0033, "Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103" (ADAMS Accession Nos. ML13200A115 and ML12289A928), directed the NRC staff, the Office of the General Counsel (OGC), and the Office of Commission Appellate Adjudication (OCAA) (collectively, "the Staff") to develop options for ITAAC hearing formats for Commission review and approval. The Commission-approved procedures described in this notice represent the culmination of these efforts. While the ITAAC hearing procedures for a particular proceeding will be established through case-specific orders, the generic procedures described in this notice will be the presumed default basis for these case-specific orders. Nonetheless, the Commission may, consistent with 10 CFR 2.310(j), direct that the ITAAC hearing be conducted in accordance with other procedures designated by the Commission.

II. Public Comments and Public Meetings

Pursuant to direction from the Commission in the SRM on SECY–13–0033, the Staff developed proposed generic ITAAC hearing procedures that the Staff published for comment in the **Federal Register** on April 18, 2014 (79 FR 21958). The 75-day comment period closed on July 2, 2014.

Early in the comment period (May 21, 2014), the Staff conducted a public meeting to allow for an exchange of information between the Staff and the public regarding the proposed procedures, the rationale therefor, and suggestions from the public on possible alternatives to the approaches taken in the proposed procedures. As stated in the meeting notice, statements made at the public meeting were not treated as formal comments on the proposed procedures because the NRC held the public meeting to help inform the public's written comments on the proposed procedures. The summary of the May 21, 2014, public meeting is available in ADAMS under Accession No. ML14153A433, and a transcript of the meeting is available in ADAMS under Accession No. ML14147A200.

Six comment letters from the following persons and entities were received on the proposed procedures:

- On behalf of the Nuclear Energy Institute (NEI), Ellen C. Ginsberg submitted comments dated July 2, 2014 (ADAMS Accession No. ML14190A012).
- On behalf of South Carolina Electric & Gas Company (SCE&G), April R. Rice submitted comments dated July 2, 2014 (ADAMS Accession No. ML14190A013).
- On behalf of Southern Nuclear Operating Company, Inc. (SNC), Brian H. Whitley submitted comments dated July 2, 2014 (ADAMS Accession No. ML14190A011).
- On behalf of Westinghouse Electric Company LLC (Westinghouse), Thomas C. Geer submitted comments dated July 1, 2014 (ADAMS Accession No. ML14190A010).
- On behalf of Florida Power and Light Company (FPL), William Maher submitted comments dated July 2, 2014 (ADAMS Accession No. ML14190A009).
- On his own behalf, Mr. Barton Z. Cowan submitted comments dated July 2, 2014 (ADAMS Accession No. ML14195A275).

Two of the commenters, NEI and SNC, requested an additional public meeting on the proposed procedures. While SNC did not identify any particular topic on which to hold a public meeting, NEI suggested holding a public meeting on issues associated with interim operation. In response to these requests and after preliminary consideration of the comments received, the NRC held an additional public meeting on September 22, 2014, to discuss seven issues associated with public comments on interim operation, claims of incompleteness, and early publication of the notice of intended operation. Mr. Marvin Lewis and representatives of NEI, SCE&G, SNC, and Westinghouse provided comments at the public meeting. The summary of the September 22, 2014, public meeting is available at ADAMS Accession No. ML14276A154, and a transcript of the meeting is available at ADAMS Accession No. ML14274A235. On September 23, 2014, Mr. Marvin Lewis submitted correspondence (ADAMS Accession No. ML14272A454) amplifying on a comment he made at the public meeting. On October 15, 2014, Ellen C. Ginsberg submitted correspondence (ADAMS Accession No. ML14289A494) on behalf of NEI, providing written comments on the issues that were discussed at the public meeting. In this letter, NEI stated that it closely coordinated with SNC, SCE&G, FPL, and Westinghouse representatives and that these companies authorized NEI to state that they concur in, and support, NEI's October 15, 2014, comments.

The "Comment Summary Report—Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met" (Comment Summary Report) (ADAMS Accession No. ML16167A464) summarizes both the written comments and the oral comments made at the September 22, 2014, public meeting. The Comment Summary Report also provides the NRC's responses to the public comments and describes how the proposed procedures were modified as a result of the comments.

III. Differences Between the Proposed Procedures and the Final Procedures

The NRC has made a number of modifications to the proposed procedures, primarily in response to public comments. In addition, the proposed procedures included options for comment on several issues, and these options have been resolved in the final procedures. Furthermore, the NRC has clarified the procedures in some cases to resolve ambiguities or to better reflect the intent underlying a provision in the proposed procedures. Finally, the NRC has made editorial corrections and minor clarifying edits to the proposed procedures. With the exception of editorial corrections and minor clarifying edits, the changes to the proposed procedures are described as follows.

A. Early Publication of the Notice of Intended Operation

In the proposed procedures (79 FR 21964), the NRC stated that it was exploring the possibility of publishing the notice of intended operation somewhat earlier than 210 days before scheduled fuel load based on a licensee's voluntary early submission of uncompleted ITAAC notifications. As explained in the proposed procedures, the uncompleted ITAAC notifications must be submitted before the notice of intended operation is published to provide sufficient information to petitioners[4] to enable them to file contentions on uncompleted ITAAC with their hearing request. However, 10 CFR 52.99(c)(3) allows licensees to submit the uncompleted ITAAC notifications up to 225 days before scheduled fuel load. Given the time needed by the NRC staff to administratively process the uncompleted ITAAC notifications, publication of the notice of intended operation earlier than 210 days before scheduled fuel load requires submission of the uncompleted ITAAC notifications earlier than 225 days before scheduled fuel load.

---

[4] As used in this notice, the word "petitioner" refers to any person who (1) is contemplating the filing of a hearing request, (2) has filed a hearing request but is not an admitted party, or (3) has had a hearing request granted.

The NRC requested comment on the pros and cons of early publication and on how early the NRC might reasonably issue the notice of intended operation. As discussed in Section 5.B of the Comment Summary Report, the NRC has decided to publish the notice of intended operation up to 75 days earlier than 210 days before scheduled fuel load (*i.e.*, 285 days before scheduled fuel load) based on the licensee's voluntary early submission of the uncompleted ITAAC notifications. With early publication, all dates in the hearing schedule would be moved up accordingly. Thus, moving up the notice of intended operation would build margin into the schedule to account for a variety of possible delays, and the licensees currently constructing the Vogtle and V.C. Summer reactors have said in their written comments that it is feasible to submit uncompleted ITAAC notifications several months earlier than required. The NRC places great weight on the schedule advantages accruing from early publication because of the statutory directive in Section 189a.(1)(B)(v) of the AEA to issue the hearing decision before scheduled fuel load "to the maximum possible extent." However, the NRC has decided to publish the notice of intended operation no earlier than 285 days before scheduled fuel load to limit the additional burden on participants from having a greater number of uncompleted ITAAC at the time the notice of intended operation is published.[5] Other aspects of early publication of the notice of intended operation are discussed in Section V.C of this notice.

B. Licensee Hearing Requests

As discussed in Section 4.N of the Comment Summary Report, the procedures have been clarified to explicitly state that a licensee hearing request need not satisfy the contention standards in 10 CFR 2.309(f) or the standing requirements of 10 CFR 2.309(d). In addition, the procedures now include deadlines for licensee hearing requests filed after the deadline (20 days from formal NRC staff correspondence stating that a particular ITAAC has not been successfully completed) and NRC staff answers to licensee hearing requests (10 days after service of the hearing request). Finally, the procedures now state that licensee hearing requests that are filed before publication of the notice of intended operation are outside the scope of the hearing procedures and will be handled on a case-specific basis.

C. Deadlines and Hearing Schedule for Hearing Requests, Intervention Petitions, New or Amended Contentions, and Claims of Incompleteness After the Deadline

In the proposed procedures (79 FR 21967), the NRC included the following options for comment on the time given for filing hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the deadline, and the time given for filing answers to these filings: (1) The petitioner is given 30 days from the new information to make its filing and the other parties have 25 days to answer. (2) The petitioner is given 20 days from the new information to make its filing and the other parties have 15 days to answer. (3) The petitioner is given some period between 20 and 30 days from the new information to make its filing and the other parties have some period between 15 and 25 days to answer.

As discussed in Section 4.J of the Comment Summary Report, commenters suggested deadlines for these filings that were even shorter than the lower ends of the ranges provided for comment in the proposed procedures. The NRC agrees with the commenters that deadlines need to be as short as reasonably possible to limit the potential for delay. However, for the reasons discussed in the Comment Summary Report, the NRC believes that the deadlines suggested by the commenters would not necessarily be feasible, in the ordinary case, given the issues that the participants would need to address in filings after the deadline and answers thereto.

Therefore, the NRC has decided that the deadline for hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the deadline will be 20 days after the event giving rise to the need for the filing.[6] In the context of claims of incompleteness, this 20-day period will be triggered by the date that the ITAAC notification (or a redacted version thereof) becomes available to the public. For answers to these filings after the deadline, the NRC has decided that a 14-day period is reasonable. Notwithstanding these deadlines, the NRC encourages participants to file as soon as possible before these deadlines if it is possible for them to do so.

As discussed in Section 4.K of the Comment Summary Report, the NRC has also clarified the discussion in the proposed procedures regarding the evidentiary hearing schedule for hearings on new and amended contentions filed after the deadline. First, if a new contention is admitted by the Commission (including a contention submitted with a hearing request or intervention petition after the deadline), then the Commission will set the hearing schedule for the new contention. Second, if an amended contention is admitted by the Commission, then the Commission may revise the existing hearing schedule as appropriate. Third, if the Commission delegates a ruling on an amended contention to an Atomic Safety and Licensing Board (ASLB) or single legal judge and the presiding officer admits the amended contention, then the strict deadline for the original contention remains the same because only the Commission can set the strict deadline and an amendment to a contention will not necessarily require an extension of the strict deadline. In such cases, the presiding officer should strive to meet the strict deadline to the best of its ability, but if unavoidable and extreme circumstances require an extension of the strict deadline, then the presiding officer may extend that deadline in accordance with the procedures set forth in the case-specific order governing the proceeding.

---

[5] As explained in the Comment Summary Report, petitioners are not prejudiced by the requirement to file contentions on uncompleted ITAAC because the uncompleted ITAAC notifications are intended to provide sufficient information to petitioners on which to file their contentions. However, if there are a greater number of uncompleted ITAAC notifications when the notice of intended operation is published, there will correspondingly be a greater number of subsequent ITAAC closure notifications for a petitioner to examine to determine whether a new or amended contention is warranted. In addition, publishing the notice of intended operation earlier marginally increases the probability of new or amended contentions being filed based on the possibility of differences between the uncompleted ITAAC notifications and the later ITAAC closure notifications. The NRC's decision not to publish the notice of intended operation any earlier than 285 days before scheduled fuel load limits additional resource burdens that would be imposed on all parties by early publication. Also, the NRC is taking steps to minimize the additional burden to petitioners associated with a greater number of uncompleted ITAAC notifications, as described in Section 5.B of the Comment Summary Report.

[6] If a petitioner submitting a hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness after the deadline believes that some aspect of operation must be stayed until action is taken in the hearing process, then that petitioner has the burden of submitting its stay request simultaneously with the hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness. If the petitioner does not include a stay request with its pleading, the petitioner will have constructively waived its right to request a stay at a later time.

D. Claims of Incompleteness

As discussed in Section 4.E of the Comment Summary Report, the NRC has adopted SNC's suggestion to require a petitioner considering whether to file a claim of incompleteness to consult with the licensee regarding access to the purportedly missing information prior to the petitioner filing the claim. The NRC agrees with SNC that a consultation process, similar to the one for motions required by 10 CFR 2.323, may obviate the need for petitioners to file, or the Commission to rule on, claims of incompleteness. Consultation would, therefore, potentially shorten the hearing schedule and conserve participants' and the Commission's resources.

The NRC also agrees with SNC that consultation should be initiated 21 days after the notice of intended operation is published. Initiating consultation by this date is reasonable since the petitioner would not be required to prepare a filing satisfying regulatory requirements but would only need to initiate discussions with the licensee on access to the allegedly missing information. In addition, a significant number of ITAAC notifications should be available well before the notice of intended operation is published, and the NRC expects petitioners to examine such notifications before the notice of intended operation is published as part of their preparations for the ITAAC hearing process. Further, initiating consultation 21 days after publication of the notice of intended operation is early enough such that, if the petitioner and licensee reach agreement in a reasonable period of time, the petitioner should be able to file any subsequent contention with the initial hearing request or shortly thereafter. To ensure effective consultation, the NRC is also requiring that the petitioner and the licensee engage in timely, sincere, and meaningful consultations. If agreement is not reached before the hearing request is due, then the NRC agrees with SNC that the claim of incompleteness must be filed with the hearing request because the consultation process should not extend the deadline for filing, consistent with NRC motions practice. In determining whether a claim of incompleteness is valid, the Commission will consider all of the information available to the petitioner, including any information provided to the petitioner by the licensee. The Commission will also consider whether the participants have discharged their consultation obligations in good faith.

While SNC's proposal addressed ITAAC notifications that are available when the notice of intended operation is published, it did not address ITAAC notifications that become available thereafter. This issue was discussed in the September 22, 2014, public meeting. After the consideration of comments and as discussed in Section 4.E of the Comment Summary Report, the NRC has decided that if the ITAAC notification (or a redacted version thereof) becomes publicly available after the notice of intended operation is published, then the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public, except that consultation need not be commenced earlier than 21 days after publication of the notice of intended operation. A 7-day period is reasonable because the volume of new ITAAC notifications to be examined by the petitioner after the notice of intended operation is published will be substantially less than the volume of ITAAC notifications covered by the initial hearing request, and the 7-day deadline is only for the initiation of consultation, not the filing of a formal request. In addition, a 7-day deadline is appropriate to allow sufficient time to complete consultation before the deadline for filing claims of incompleteness.

The comment by SNC also did not address scenarios in which a petitioner seeks sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI) from the licensee.[7] This issue was also a subject of the September 22, 2014, public meeting. As discussed in Section 4.I of the Comment Summary Report, within one day of the licensee discovering that consultation on a claim of incompleteness involves SUNSI or SGI, the licensee must inform the petitioner of this fact. Within one day of the licensee discovering that security-related SUNSI or SGI is involved, the licensee must also inform the NRC staff with a brief explanation of the situation. Notifying the NRC staff is necessary because of the NRC's duty to ensure that security-related SUNSI is only provided to those individuals with a need for the information and that SGI is only provided to those individuals who have a need to know the SGI, who have been determined to be trustworthy and reliable after a background check, and who will provide sufficient security measures for any SGI in their possession. For this reason, if consultation on a claim of incompleteness involves security-related SUNSI or SGI, then the licensee shall not provide the security-related SUNSI or SGI unless and until the NRC has determined that such access is appropriate. In addition, if SGI is involved and the petitioner would like to continue to seek access, then to expedite the proceeding the petitioner must complete and submit to the NRC the forms and fee necessary for the performance of a background check within 5 days of notice from the licensee that SGI is involved. Petitioners are expected to have forms completed prior to this date to allow for expeditious submission of the required forms and fee.

As discussed in Section 4.I of the Comment Summary Report, if a claim of incompleteness seeking access to SUNSI or SGI is ultimately filed with the NRC, then the claim of incompleteness, and the licensee's answer thereto, must specifically identify the extent to which the petitioner or the licensee believes that any of the requested information might be SUNSI or SGI. Also, a claim of incompleteness seeking access to SUNSI or SGI must show the need for the information (for SUNSI) and the need to know the information (for SGI). A claim of incompleteness involving SGI must further state that the required forms and fee for the background check have been submitted to the NRC. As discussed in Section 4.I of the Comment Summary Report, the final procedures state that petitioners are required to take advantage of the available processes for seeking access to SUNSI or SGI and that their failure to do so will be taken into account by the NRC. Other provisions regarding access to SUNSI or SGI in the context of claims of incompleteness have been included in the final procedures based on relevant provisions in the SUNSI–SGI Access Order.

Finally, as discussed in Section 4.E of the Comment Summary Report, the final procedures provide that a contention based on additional information provided to the petitioner by the licensee through consultation on a claim of incompleteness will be due within 20 days of the petitioner's access to the additional information, unless more than 20 days remains between access to the additional information and the deadline for the hearing request, in which case the contention will be due by the later hearing request deadline.

---

[7] Westinghouse, however, did request the NRC include procedures for access to SUNSI and SGI in the context of claims of incompleteness, as discussed in Section 4.I of the Comment Summary Report.

This 20-day period is consistent with the time period for filing new or amended contentions after the deadline.

Apart from the consultation process for claims of incompleteness, the final procedures include a number of other modifications and clarifications to the process for claims of incompleteness. First, as discussed in Section 4.F of the Comment Summary Report, the procedures have been clarified to explicitly state that a claim of incompleteness does not toll a petitioner's obligation to make a timely *prima facie* showing. If the petitioner is unsure whether to file a contention or a claim of incompleteness on an ITAAC notification, the petitioner may submit both a contention and a claim of incompleteness at the same time, arguing in the alternative that if the contention is not admissible, then the claim of incompleteness is valid.

Second, as stated in Section 4.G of the Comment Summary Report, the procedures have been clarified to state that claims of incompleteness must include a demonstration that the allegedly missing information is reasonably calculated to support a *prima facie* showing. This requirement is implied by 10 CFR 2.309(f)(1)(vii), but making it explicit should help petitioners understand the showing that NRC regulations require for claims of incompleteness. In addition, the procedures now state that the petitioner must provide an adequately supported showing that the 10 CFR 52.99(c) report fails to include information required by 10 CFR 52.99(c).

Third, as stated in Section 4.H of the Comment Summary Report, the procedures have been clarified to state that a valid claim of incompleteness will only result in the licensee providing information relevant to the specific portions of the 10 CFR 52.99(c) notification that were the subject of the claim of incompleteness. This result is implied by 10 CFR 2.309(f)(1)(vii), which expressly ties the claim of incompleteness to a showing that the licensee's 10 CFR 52.99(c) ITAAC notifications do not contain information required by that regulation.

Fourth, the template for resolving valid claims of incompleteness has been revised so that the additional procedures included in the Commission order will not be taken primarily from the evidentiary hearing template but will be taken primarily from the Additional Procedures Order in the template for the notice of intended operation. The Commission is making this change because fewer modifications are required to adapt the Additional Procedures Order to resolve valid claims of incompleteness.

E. Legal Contentions and Briefing of Legal Issues

As discussed in Section 4.M of the Comment Summary Report, the NRC has clarified the procedures to define a legal contention as any contention that does not involve a dispute of fact. Also, in order to expedite the proceeding and ensure sound decision making by the presiding officer, the final procedures provide that participants must fully brief all relevant legal issues in their filings. This includes, but is not limited to, (1) hearing requests filed by the original deadline; (2) hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline; and (3) answers to these filings. By requiring participants to fully brief legal issues in their filings, the presiding officer may be able to resolve all legal questions quickly.

In addition, the NRC has modified the template for the legal contention track to more specifically describe how the evidentiary hearing procedures apply to a hearing on a legal contention. In summary, the evidentiary hearing procedures apply with the exception of those that involve testimony (or associated filings) and those that involve discovery, the purpose of which is to support the preparation of testimony. Also, the final legal contention track template eliminates the statement in the proposed template that procedures dealing with interactions between the Commission and administrative judges would be omitted if the Commission designates itself as the presiding officer for resolving the legal contention. The NRC made this change because, even if the Commission is the presiding officer for the legal contention, a licensing board or single legal judge might rule on amended contentions or disputes over access to SUNSI or SGI.

F. Motions for Extension of Time

In the proposed procedures (79 FR at 21968), the NRC included the following proposal for motions for extension of time:

> Motions for extension of time will be allowed, but good cause must be shown for the requested extension of time based on an event occurring before the deadline. To meet the statutory mandate for the timely completion of the hearing, deadlines must be adhered to strictly and only exceptional circumstances should give rise to delay. Therefore, in determining whether there is good cause for an extension, the factors in 10 CFR 2.334 will be considered, but "good cause" will be interpreted strictly, and a showing of "unavoidable and extreme circumstances" will be required for more than very minor extensions . . . .
>
> Motions for extension of time shall be filed as soon as possible, and, absent exceptional circumstances, motions for extension of time will not be entertained if they are filed more than two business days after the moving party discovers the event that gives rise to the motion. The Staff selected an event-based trigger for the filing of an extension request because meritorious motions will likely be based on events outside the party's control given the strict interpretation of good cause.

(footnote omitted). However, the NRC specifically requested comment on whether "very minor extensions" should be defined in a more objective manner or whether a showing of unavoidable and extreme circumstances should be required for all extension requests, no matter how minor. The NRC also requested comment on whether a deadline-based trigger (*e.g.,* "motions for extension of time shall be filed as soon as possible, but no later than 3 days before the deadline") should be used in lieu of, or in combination with, an event-based trigger.

As discussed in Section 3.B of the Comment Summary Report, the NRC has decided to eliminate the "very minor extensions" language because the NRC agrees with commenters that (1) the ITAAC hearing schedule does not allow for any delay unless such delay is absolutely necessary, (2) employing one standard instead of two makes application simpler and avoids litigation over which standard should apply, and (3) it is possible for participants to meet the unavoidable and extreme circumstances standard for very minor extension requests (*e.g.,* a one-day extension request based on an unforeseen, sudden event occurring on the filing due date that prevents the participant from meeting the deadline). Therefore, the NRC has decided to apply the unavoidable and extreme circumstances standard to all extension requests, no matter how minor.

The NRC has also decided to employ a combination of a deadline-based and an event-based trigger for motions for extension of time. The NRC agrees with SNC's comment that a meritorious motion for extension of time will generally be triggered by a sudden, unforeseen event, probably at the last minute. However, the NRC also agrees with NEI and SCE&G that the event giving rise to an extension request might occur over time, making it difficult to identify the specific date that would trigger the obligation to file an extension request. Given these considerations, the NRC has decided to employ a deadline-based trigger for extension requests but to allow for the later filing of an extension request if unavoidable and extreme circumstances prevent the filing of the extension request by the deadline-based trigger. Specifically, the final procedures provide that motions for extension of time shall be filed as soon as possible, but no later than 3 days before the deadline, with one limited exception. If the petitioner is unable to file an extension request by 3 days before the deadline, then the petitioner must (1) file its request as soon as possible thereafter, (2) demonstrate that unavoidable and extreme circumstances prevented the petitioner from filing its extension request by 3 days before the deadline, and (3) demonstrate that the petitioner filed its extension request as soon as possible thereafter.

G. Presiding Officer for the Hearing

As discussed in Section 6.A of the Comment Summary Report, the NRC has decided that for evidentiary hearings (*i.e.,* hearings involving testimony), an ASLB or a single legal judge (assisted as appropriate by technical advisors) will preside over the hearing. An ASLB or a single legal judge can efficiently conduct evidentiary hearings, and this choice promotes an appropriate division of responsibilities between the Commission and administrative judges because the Commission has tasked itself with (1) issuing decisions on initial hearing requests and on hearing requests, intervention petitions, new contentions, and claims of incompleteness filed after the deadline, (2) designating hearing procedures, and (3) making the adequate protection determination for interim operation. This choice also provides the flexibility to employ multiple presiding officers in cases where a large number of contentions are admitted.

The case-specific choice on whether to employ an ASLB or a single legal judge for an evidentiary hearing will ordinarily be made by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel after the Commission grants the hearing request. To ensure that the selected presiding officer can immediately engage the proceeding in a meaningful manner, the Chief Administrative Judge will be expected to identify, within a reasonable period of time prior to the Commission's decision on the hearing request, administrative judges who might be selected to serve as the presiding officer. The Commission expects the selected judges to familiarize themselves with the ITAAC hearing procedures and the parties' pleadings before a decision on the hearing request so that they can perform meaningful work immediately after a decision on the hearing request.

For hearings on legal contentions, the choice of presiding officer will generally depend on case-specific factors. The procedures retain the Commission's discretion to serve as the presiding officer or to delegate that function. However, the Commission has concluded, as a general matter, that a single legal judge should be the presiding officer for hearings on legal contentions when the Commission chooses not to be the presiding officer. When only legal issues are involved, the considerations in favor of employing a panel are less weighty given that most ASLBs in other proceedings include only one legal judge, with the other two judges being technical experts on factual matters. Also, a single judge may be able to reach and issue a decision more quickly than a panel of judges. Therefore, the final procedures provide that if the Commission chooses not to be the presiding officer for a hearing on a legal contention, the presiding officer will be a single legal judge, assisted as appropriate by technical advisors.

H. Evidentiary Hearing Schedule

As discussed in Section 5.C of the Comment Summary Report, the NRC has made some modifications to the general evidentiary hearing track schedules. First, the NRC has changed the milestone for initial testimony from 35 days after the granting of the hearing request to 30 days after the granting of the hearing request. The NRC has also added a provision explicitly providing that the Commission may in a particular proceeding add up to 5 days to, or subtract up to 5 days from, this 30-day milestone. These changes to the initial testimony milestones are intended to provide more flexibility in the hearing schedule based on the number and complexity of contested issues. While 30 days is the default period, a 25-day period might be appropriate when there are only one or two simple issues in dispute, while a 35-day period might be needed if the hearing involves numerous admitted contentions with complex issues. Second, the NRC has reduced the time period for rebuttal in the Track 1 procedures to 14 days from 15 days. A 14-day period day should avoid delays resulting from a deadline falling on a weekend while giving parties sufficient time to prepare their rebuttal filings.

Third, the final procedures explicitly acknowledge the possibility that the oral hearing might last longer than one day and explicitly allow for changes to the overall schedule in light of this possibility to ensure that the initial decision is issued by the strict deadline. The NRC expects the presiding officer to consider and discuss such adjustments during the prehearing conference. Fourth, and finally, the final procedures add, as an example of the presiding officer's authority to make minor modifications to Commission-established milestones, the ability of the presiding officer to make a minor adjustment to a milestone to avoid delay that would occur if the milestone falls on a weekend or holiday (*e.g.,* reducing the due date for initial testimony from 30 days to 29 days because the 30th day falls on a Saturday). The final procedures also state that the Commission expects the presiding officer to make such adjustments, as necessary, to avoid delay.

I. Criteria for Deciding Between the Track 1 and Track 2 Procedures

In the proposed procedures (79 FR at 21970), the NRC requested comment on factors for the Commission to consider when choosing between Track 1 procedures (which include both written initial and rebuttal testimony) and Track 2 procedures (which include written initial testimony but not written rebuttal testimony) in an individual proceeding. The proposed procedures explained that while Track 2 has a schedule advantage in that it is shorter than Track 1, the Track 1 procedures enjoy the advantages that come from written rebuttal, including greater assurance that the contested issues will be fully fleshed out in writing before the hearing.

As discussed in Section 5.D of the Comment Summary Report, the NRC has made the Track 1 procedures the default evidentiary hearing track. Written rebuttal should ensure that the parties have a complete opportunity to respond to new, unexpected issues raised in the other parties' initial testimony. Also, written rebuttal should help to clarify the evidentiary record and the contested issues prior to the oral hearing, which ought to make the oral hearing shorter and more efficient. Further, written rebuttal should help the presiding officer reach its decision more expeditiously by increasing the likelihood that the topics raised in initial testimony will have been fully addressed before the hearing. Given these advantages, written rebuttal will be included in most cases. Setting Track 1 as the default hearing track will simplify the process for designating hearing procedures in each proceeding.

The Track 1 schedule should generally accommodate a timely hearing decision for contentions submitted with the initial hearing request. In cases where the Track 1 schedule might not accommodate issuance of the initial decision by scheduled fuel load (*e.g.,* where new contentions after the deadline are admitted), the NRC believes that the benefits of written rebuttal will nevertheless generally outweigh the minor potential time savings from its elimination. Also, even though Track 2 is nominally shorter than Track 1, the time saved from eliminating written rebuttal might ultimately be lost during the hearing and post-hearing phases if the presiding officer has an incomplete understanding of the parties' positions prior to the oral hearing.

In any event, the Commission retains the authority to eliminate written rebuttal in individual proceedings. For example, the Commission might eliminate written rebuttal if the contested issues are narrow and simple and the parties' positions in the hearing request and answers are sufficiently established to allow a full response in the parties' initial testimony and statements of position. To enhance the Commission's ability to make such a change in a timely manner, the evidentiary hearing template indicates the modifications that would need to be made if the Commission decides to exclude written rebuttal.

J. Additional Evidentiary Hearing Tracks

As discussed in Section 5.E of the Comment Summary Report, several commenters recommended the use of hearing tracks in addition to those described in the proposed procedures. Specifically, NEI and SCE&G recommended the use of a purely oral subpart N-type hearing track in some cases to complete the hearing more quickly, while Westinghouse recommended the possible use of a legislative hearing track. As explained in the Comment Summary Report, the NRC declines to adopt these suggestions but is supplementing its discussion of the rationale for the selected hearing tracks in Section V.D of this notice.

The procedures have also been clarified with respect to the prohibition in 10 CFR 2.309(g) that participants may not address the selection of hearing procedures in their initial filings. The final procedures state that this prohibition does not apply to hearing requests from the licensee because such hearing requests are not subject to 10 CFR 2.309 and because the generic procedures do not address the procedures for hearings requested by the licensee.

K. APA Section 554 Provision on Eliminating the Need for a Hearing

As discussed in Section 5.F of the Comment Summary Report, several commenters recommended that the NRC set up a process for invoking the Administrative Procedure Act (APA) exception in 5 U.S.C. 554(a)(3) to avoid holding a hearing where the decision "rest[s] solely on inspections, tests, or elections." The commenters suggested that the Commission determine the exception's applicability in its decision on the hearing request. While the NRC has previously stated in the abstract that it may be legally possible to apply the APA exception to some ITAAC in an ITAAC hearing (depending on the wording of the ITAAC and other relevant circumstances), the NRC does not believe that the commenters' suggestion is practical.

If the petitioner does not satisfy the hearing request requirements, then invoking the APA exception would be unnecessary. However, if the petitioner meets the hearing request requirements, including the *prima facie* showing, then the petitioner will have raised questions of sufficiency, of credibility, or conflict (*i.e.,* that the licensee's manner or method of complying with the ITAAC is flawed) that would warrant the grant of a hearing.

Although not suggested by the commenters, the NRC also considered the possibility of applying the APA exception prior to the hearing by individually considering all of the ITAAC and all of the possible challenges to ITAAC completion and then selecting the ITAAC that could fall under the APA exception. However, the NRC does not believe that it would be fruitful to engage in such an exercise at this time given the massive resources required, the way most ITAAC are currently written, and the NRC's lack of experience with ITAAC hearings.

For the reasons described in this section and in Section 5.F of the Comment Summary Report, the NRC has modified the procedures to state that the NRC has not identified at this time a practical approach for invoking the APA exception in an ITAAC hearing.

L. Contraction of Fuel Load Schedule

As discussed in Section 5.G of the Comment Summary Report, the NRC has modified the procedures to clarify a statement in the proposed procedures regarding the licensee's ability to accelerate its fuel load schedule once the notice of intended operation is published. The NRC did not intend to prevent a licensee from operating if all of the requirements for operation are met. However, for the purposes of meeting the directive in Section 189a.(1)(B)(v) of the AEA for the NRC to timely complete the hearing, the "anticipated date for initial loading of fuel into the reactor" referenced in Section 189a.(1)(B)(v) of the AEA is established prior to publication of the notice of intended operation and cannot thereafter be moved up by the licensee. This is because the hearing process will be triggered, and the schedule will in part be determined, by publication of the notice of intended operation, the timing of which is based on the fuel load schedule that the licensee provides to the NRC before the notice of intended operation. If the "anticipated date for initial loading of fuel into the reactor" could be moved up after the notice of intended operation, then the NRC could be put in the untenable position of having a constantly moving target for completing the hearing. The NRC does not believe that Congress intended this, or that trying to meet such a constantly moving target would be consistent with a fair and orderly hearing process. Nonetheless, the licensee can, consistent with 10 CFR 52.103(a), move up its scheduled fuel load date after the notice of intended operation is published. Such a contraction in the licensee's fuel load schedule would have no effect on the hearing schedule, but as a practical matter, the NRC would consider such a contraction in the licensee's schedule as part of its process for making the 10 CFR 52.103(g) finding and the adequate protection determination for interim operation.

M. Pre-Clearance Process for Access to SGI

As discussed in Section 6.B of the Comment Summary Report, the NRC has decided to publish the plant-specific **Federal Register** notice on the pre-clearance SGI background check process 420 days before scheduled fuel load rather than 390 days before scheduled fuel load. For these purposes, the NRC will base the projected date of fuel load on the licensee's estimated schedule. This change accounts not only for the fact that the notice of intended operation might be published up to 75 days earlier, but also for the fact that SGI background checks now take less time than they previously did. The NRC has also decided that this "pre-clearance" notice will state that the required background check forms and fee should be submitted within 20 days of the pre-clearance notice to allow enough time for the completion of the background check prior to the publication of the notice of intended operation. Finally, the NRC has made some clarifications to the discussion in the proposed procedures regarding delays due to the processing of SGI background checks.

N. Development of Protective Order Templates for Access to SUNSI and SGI

As discussed in Section 6.B of the Comment Summary Report, the NRC will develop generic protective order templates for SUNSI and SGI to help expedite proceedings involving a petitioner's access to SUNSI or SGI. The NRC intends to develop these templates in a public process allowing stakeholder feedback, separate from the issuance of these final ITAAC hearing procedures. However, the final procedures reflect the use of the generic protective order templates that will be developed by the NRC.

O. Presiding Officer for Review of SUNSI–SGI Access Determinations and Related Matters

In the proposed procedures, the NRC requested comment on whether the Commission or an ASLB (or single legal judge) should be the presiding officer for review of SUNSI–SGI access determinations and for protective orders and other related matters under the SUNSI–SGI Access Order. *See* Draft Template A, at 44 nn. 23–24, 45–46 (ADAMS Accession No. ML14097A460). For an admitted party seeking access to SUNSI or SGI relevant to the admitted contentions, the proposed procedures provided that the 10 CFR 2.336 disclosures process would be used in lieu of the SUNSI–SGI Access Order, and that any disputes among the parties over access to SUNSI would be resolved by the presiding officer, while any disputes over access to SGI would be resolved in accordance with 10 CFR 2.336(f). *See* Draft Template B, at 17 (ADAMS Accession No. ML14097A468).

As discussed in Section 6.F of the Comment Summary Report, the NRC has determined that challenges to NRC staff access determinations under the SUNSI–SGI Access Order are to be filed with the Chief Administrative Judge, who will assign a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. The Commission believes that administrative judges are particularly suited to expeditiously resolve questions of this kind, and a single legal judge may be able to issue a decision on a more expedited basis. If the challenge relates to an adverse determination by the NRC's Office of Administration on trustworthiness and reliability for access to SGI, then consistent with 10 CFR 2.336(f)(1)(iv), neither the single legal judge chosen to rule on such challenges nor any technical advisors supporting a ruling on the challenge can serve as the presiding officer for the proceeding.[8]

Consistent with the proposed procedures, a motion to compel access to SUNSI made as part of the mandatory disclosures process shall be heard by the presiding officer of the proceeding, and a motion to compel access to SGI made as part of the mandatory disclosures shall be resolved in accordance with 10 CFR 2.336(f). Consistent with 10 CFR 2.336(f), the presiding officer for the hearing would hear challenges to NRC staff determinations on access to SGI except for challenges to adverse Office of Administration determinations on trustworthiness and reliability. For adverse determinations on trustworthiness and reliability, a separate single legal judge (assisted as appropriate by technical advisors) would rule on the challenge.

For the sake of efficiency, in cases where there is a dispute over access to SUNSI or SGI that was resolved by a presiding officer, the presiding officer for the issuance of protective orders and other related matters will be the same as the presiding officer that heard the dispute over access. In cases where there is no access dispute but a presiding officer is needed for protective orders or other related matters, (1) the presiding officer for the admitted contention will be the presiding officer for such matters when the SUNSI or SGI is being provided as part of mandatory disclosures, and (2) the Chief Administrative Judge will appoint a presiding officer for such matters when the SUNSI or SGI is being provided under the SUNSI–SGI Access Order.

P. Mandatory Disclosures

As discussed in Section 6.G of the Comment Summary Report, the NRC has made the following modifications to the mandatory disclosure requirements to make them more flexible and efficient:

- Parties may agree to exclude certain classes of documents (such as drafts) from the mandatory disclosures. The NRC has no objection to such exclusions if agreed to by the parties, and such exclusions should be discussed at the prehearing conference.
- As a default matter, a party is not required to include a document in a privilege log if (1) the document satisfies the withholding criteria of 10 CFR 2.390(a), and (2) the document is not being withheld on the basis that it is SGI, security-related SUNSI, or proprietary information. The NRC is making this change because SGI, security-related SUNSI, and proprietary information could have some bearing on contested issues and access might be appropriate in some circumstances pursuant to a protective order. However, other types of privileged information are much less likely to have a bearing on contested issues, particularly given the narrow technical nature of ITAAC. Nonetheless, the presiding officer may change the scope of the privilege log requirement for a case-specific reason, and the parties may jointly agree to change the scope of the privilege log requirement.
- Privilege logs will be viewed as sufficient if they specifically identify each document being withheld (including the date, title, and a brief description of the document) and the basis for withholding (*e.g.*, "contains SGI").

Q. Notifications of Relevant New Developments in the Proceeding

As discussed in Section 6.H of the Comment Summary Report, the procedures have been revised to state that if an ITAAC closure notification or ITAAC post-closure notification is submitted on a contested ITAAC, then notification to the ASLB and the participants of this fact will be due within one day, rather than on the same day. The NRC agrees with commenters that same-day notification may be impractical in some instances.

R. Proposed Findings of Fact and Conclusions of Law

In the proposed procedures (79 FR at 21972), the NRC requested comment on the following two options regarding proposed findings of fact and conclusions of law:

(1) Proposed findings of fact and conclusions of law would be allowed unless the presiding officer, on its own motion or upon a joint agreement of all the parties, dispenses with proposed findings of fact and conclusions of law for some or all of the hearing issues.

(2) Proposed findings of fact and conclusions of law would not be permitted unless the presiding officer determines that they are necessary. Under this option, the presiding officer may limit the scope of proposed

---

[8] This restriction is intended to prevent the possible appearance that a presiding officer's ruling on the merits of a contention, for example, might have been improperly influenced by access to personal information about a person requesting access to SGI. *See* Protection of Safeguards Information, (73 FR 63546, 63550; October 24, 2008) (final rule).

findings of fact and conclusions of law to certain specified issues.

As discussed in Section 6.J of the Comment Summary Report, the NRC is adopting the option whereby proposed findings of fact and conclusions of law will be allowed unless the presiding officer dispenses with them for some or all of the hearing issues. The NRC is allowing proposed findings of fact and conclusions of law as a default matter because they may aid the presiding officer by summarizing the parties' positions on the issues at hearing and citing to the hearing record. Allowing proposed findings of fact and conclusions of law also should not significantly affect the hearing schedule because the initial decision date is tied to the oral hearing date. Further, the parties should have available resources to prepare the filing since all other hearing activities will have concluded. Finally, the presiding officer may adopt a party's proposed findings of fact and conclusions of law if the presiding officer deems it appropriate to do so, which could save time in some cases.

S. Motions and Petitions for Reconsideration and Motions for Clarification

In the proposed procedures (79 FR at 21968–69, 21970), the NRC requested comment on the following three options regarding requests for reconsideration:

(1) Except for more abbreviated filing deadlines, motions and petitions for reconsideration would be allowed in accordance with 10 CFR 2.323(e) and 10 CFR 2.345, respectively.

(2) Motions and petitions for reconsideration would only be allowed for the initial decision and Commission decisions on appeal of the initial decision.

(3) Motions and petitions for reconsideration would not be permitted.

In addition, for Options 2 and 3, the proposed procedures included two limitations on motions for clarification to prevent them from becoming de facto motions for reconsideration. Specifically, a motion for clarification could only be based on an ambiguity in a presiding officer order and could not advocate for a particular interpretation of the presiding officer order.

As discussed in Section 6.L of the Comment Summary Report, the NRC has adopted Option 2, which allows reconsideration only for initial decisions and Commission decisions on appeal of initial decisions. The NRC has also included the limitations on motions for clarification that are described previously with the exception of the prohibition on advocacy, which the NRC considers unnecessary. The NRC adopted Option 2 to avoid diversion of presiding officer and party resources prior to the initial decision given the extremely abbreviated ITAAC hearing schedule and given that appeal rights will quickly accrue. In addition, a request for reconsideration of either the initial decision or of a Commission decision on appeal of the initial decision will not prevent these decisions from taking effect. Furthermore, initial decisions and Commission decisions on appeal of initial decisions are the most important decisions in the proceeding, so allowing reconsideration of these decisions is prudent.

Notwithstanding this, the NRC acknowledges that given the first-of-a-kind nature of ITAAC hearings, there may be a need to correct misunderstandings or errors in a presiding officer's decision. The potential for such errors and misunderstandings may be compounded by the very tight timeline on which decisions must be issued. Thus, to the extent that a presiding officer decision is based on a simple misunderstanding or a clear and material error (*e.g.,* a conflict between the scheduling order and the Commission's order imposing procedures for the hearing), the parties could attempt to more informally raise the issue with the presiding officer by requesting a conference call on the matter.[9] For this reason, the final procedures allow such requests, which should be made by email to the presiding officer's law clerk with the other parties' representatives copied on it. If the presiding officer decides that no conference call is necessary, then the parties' and the presiding officer's resources will not have been expended. If a conference call is held, the resource expenditure should be minimal and any error or misunderstanding could be more quickly rectified than through a formal request for reconsideration.

T. Interlocutory Review

In the proposed procedures (79 FR at 21970), the NRC requested comment on the following two options regarding interlocutory review:

(1) Interlocutory review would be available only for presiding officer determinations on access to SUNSI or SGI.

(2) Interlocutory review would be available for presiding officer determinations on access to SUNSI or SGI. For other presiding officer decisions, the interlocutory review provisions of 10 CFR 2.341(f) would be retained without modification. However, interlocutory review would be disfavored, except for decisions on access to SUNSI or SGI, because of the expedited nature of an ITAAC hearing.

As discussed in Section 6.M of the Comment Summary Report, the NRC has limited interlocutory review to decisions on access to SUNSI or SGI because interlocutory review of other decisions would be unnecessary and unproductive given the expedited nature of the proceeding. Because of the abbreviated ITAAC hearing schedule, appeal rights will quickly accrue, and before the initial decision, the parties' resources should be dedicated to completing the hearing. The NRC is allowing interlocutory review for decisions granting access to SUNSI or SGI because a post-hearing appeal opportunity will not cure the harm from a pre-hearing grant of access to sensitive information. The NRC is also providing a right to interlocutory review for decisions denying access to SUNSI or SGI because the NRC believes that those seeking access to SUNSI or SGI should have a reciprocal appeal opportunity and because it is important to quickly resolve disputes over access to such information given the potential effect that an erroneous denial of access might have on the schedule of the proceeding. However, the Commission does not expect appeals seeking to overturn a denial of access to SUNSI or SGI to delay any aspect of the proceeding unless the requestor can show irreparable harm.

The NRC has also decided that, because of the limited nature of the dispute, a 7-day period is appropriate for filing and answering interlocutory appeals of decisions on access to SUNSI or SGI. The NRC has also made corresponding changes to the deadlines in 10 CFR 2.336(f)(1)(iii)(B) and (f)(1)(iv) for challenges to adverse NRC's Office of Administration determinations on trustworthiness and reliability for access to SGI.

U. Reopening the Record

The proposed procedures (Draft Template B, page 35) provided a procedural mechanism for reopening the record, and provided for comment the following two options on how the reopening standards were to be applied:

(1) The NRC's existing rule in 10 CFR 2.326 would apply to any motion to reopen the record.

---

[9] This possibility is not available in cases where the Commission, itself, is serving as the presiding officer because such an informal process would be impractical since Commission action is subject to formal processes (some of which are required by law). In addition, the potential need for such an informal process is less likely to arise in the portions of the ITAAC hearing process over which the Commission will preside.

(2) Motions to reopen the record would be entertained only with respect to the submission of new information related to a previously admitted contention, and 10 CFR 2.326 would apply to any such motion. A motion to reopen would not be required for a hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline.

As stated in the **Federal Register** notice for the proposed procedures (79 FR at 21967), the intended difference between the two options was whether hearing requests, intervention petitions, and new or amended contentions after the original deadline should be exempted from the requirements in 10 CFR 2.326. The proposed procedures stated that a possible rationale for not applying the reopening standards to these filings after the deadline is that the purposes served by the reopening provisions—to ensure an orderly and timely disposition of the hearing—would be addressed by the requirements already applying to hearing requests, intervention petitions, and new or amended contentions filed after the deadline. Specifically, the proposed procedures stated that one could argue that any timeliness concerns are addressed by the good cause requirement in 10 CFR 2.309(c) and that concerns regarding newly raised issues being significant and substantiated are addressed by the *prima facie* showing requirement in 10 CFR 2.309(f)(1)(vii).

As discussed in Section 6.O of the Comment Summary Report, the NRC has decided that the 10 CFR 2.326 reopening requirements will apply to all efforts to reopen the record. The reopening standards are familiar in NRC adjudications and have served to ensure the orderly and timely disposition of proceedings in the past. Applying the reopening standards to hearing requests, intervention petitions, and new or amended contentions filed after the deadline may enable the agency to avoid fruitless hearings close to the date of expected fuel load in some situations. These situations would occur when the contention provides a *prima facie* case but does not raise a substantial issue or demonstrate the likelihood of a materially different result. Finally, the Commission does not expect this standard to impose a substantial burden on the litigants given the similarity between the reopening standards and the ITAAC contention admissibility standards.

V. Interim Operation

In response to comments, the NRC has decided to expand on and clarify the discussion of interim operation in the proposed procedures. Specifically, as explained in Section 7.B of the Comment Summary Report, the NRC is supplementing its discussion of the basis for its conclusion that the Commission's determination on adequate protection during interim operation is not intended to be a merits determination on the petitioner's *prima facie* showing. Also, as discussed in Section 7.D of the Comment Summary Report, the NRC is expanding on and clarifying the procedures' discussion of how interim operation applies in various contexts. The additional discussion on these two points appears later in this notice. Finally, as discussed in Section 7.F of the Comment Summary Report, the NRC has modified the procedural order templates to state, consistent with the **Federal Register** notice for the proposed and final procedures, that 10 CFR 2.340(j) does not apply in cases where interim operation has been allowed.

W. Submission, Filing, and Service of Documents

As discussed in Section 3.A of the Comment Summary Report, the NRC has decided to eliminate hand delivery as a means of submitting, filing, or serving documents. Hand delivery to the NRC is impractical because it would require a contact being available to receive the document at the time it is delivered, which would impose undue burdens on the recipients, especially if the document were delivered later in the evening. For the same reason, hand delivery could be impractical for other organizations.

On a different matter, the final procedures now specify that SGI background check forms and fees that are submitted to the NRC pursuant to the SUNSI–SGI Access Order must be submitted by overnight mail. No method of delivery was specified in the proposed procedures, but the NRC has decided to require the use of overnight mail to avoid delay and to be consistent with the filing and transmission methods used for paper documents in other ITAAC hearing-related contexts.

X. Initial Decision Becoming Final Action of the Commission

The proposed procedures included a change to 10 CFR 2.1210 regarding the time at which the initial decision becomes final action of the Commission. This change had the purpose of making 10 CFR 2.1210 conform to 10 CFR 2.341. However, after the proposed procedures were published, the NRC issued a rule entitled "Miscellaneous Corrections" (79 FR 66598; November 10, 2014) modifying 10 CFR 2.1210 to be consistent with 10 CFR 2.341. Therefore, the change to 10 CFR 2.1210 that was in the proposed ITAAC hearing procedures is no longer necessary and has been eliminated.

IV. Previously Established Law, Regulation, and Policy Governing ITAAC Hearings

In developing ITAAC hearing procedures, the NRC has implemented previously established law, regulation, and policy governing ITAAC hearings. In particular, the procedures were developed with an eye toward the overarching statutory requirement for the expeditious completion of an ITAAC hearing found in Section 189a.(1)(B)(v) of the AEA. This section provides that the Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel into the reactor, whichever is later. Other provisions of previously established law, regulation, and policy, the discussion of which directly follows, may be grouped into three categories: (1) Provisions relating to hearing requests, (2) provisions relating to interim operation, and (3) provisions relating to the initial decision of the presiding officer on contested issues after a hearing.

A. Hearing Request

Section 189a.(1)(B)(i) of the AEA and 10 CFR 52.103(a) provide that not less than 180 days before the date scheduled for initial loading of fuel into the reactor, the NRC will publish in the **Federal Register** a notice of intended operation, which will provide that any person whose interest may be affected by operation of the plant may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license. The contents of the notice of intended operation are governed by 10 CFR 2.105. With respect to the timing of this notice, the Commission's previously stated goal was to publish the notice of intended operation 210 days before scheduled fuel load (72 FR at 49367). This is still the goal if uncompleted ITAAC notifications are not submitted earlier than required. However, the NRC has decided that it will publish the notice of intended operation up to 75 days earlier (*i.e.*, 285 days before scheduled fuel load) if the uncompleted ITAAC notifications are submitted earlier than required and certain other requirements are met.

Hearing requests are governed by 10 CFR 2.309. In accordance with 10 CFR 2.309(a), a hearing request in a proceeding under 10 CFR 52.103 must include a demonstration of standing and contention admissibility, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for ITAAC hearings as it provides for other proceedings. Thus, discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to ITAAC hearings as it does to other proceedings. As reflected in 10 CFR 2.309(f)(1)(i), the issue of law or fact to be raised in an ITAAC hearing request must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety.[10]

In addition to the normal requirements for hearing requests, ITAAC hearing requests must, as required by Section 189a.(1)(B)(ii) of the AEA, show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be, met and must show, *prima facie*, the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This required "*prima facie*" showing is implemented in 10 CFR 2.309(f)(1)(vii). Section 2.309(f)(1)(vii) also provides a process for petitioners to claim that a licensee's 10 CFR 52.99(c) report is incomplete and that this incompleteness prevents the petitioner from making the necessary *prima facie* showing. To employ this process, which this notice terms a "claim of incompleteness," the petitioner must identify the specific portion of the licensee's 10 CFR 52.99(c) report that is incomplete and explain why this deficiency prevents the petitioner from making the necessary *prima facie* showing.

Also, as provided by 10 CFR 51.108, the NRC is not making any environmental finding in connection with its finding under 10 CFR 52.103(g) that the acceptance criteria are met, and the Commission will not admit any contentions on environmental issues in an ITAAC hearing. Instead, the 10 CFR 52.103(g) finding is a categorical exclusion as provided in 10 CFR 51.22(c)(23). As the Commission explained (72 FR at 49428) when promulgating 10 CFR 51.108 and 10 CFR 51.22(c)(23): (1) The major Federal action with respect to facility operation is issuing the COL because the COL authorizes operation subject to successful completion of the ITAAC; (2) the environmental effects of operation are evaluated in the COL environmental impact statement; and (3) the 10 CFR 52.103(g) finding is constrained by the terms of the ITAAC (*i.e.*, it involves only a finding on whether the predetermined acceptance criteria are met). Therefore, the environmental effects of operation were considered, and an opportunity for a hearing on these effects was provided, during the proceeding on issuance of the COL.

Design certification rules contain additional provisions regarding ITAAC hearing requests. Any proceeding for a reactor referencing a certified design would be subject to the design certification rule for that particular design. For example, any ITAAC hearing for a plant referencing the AP1000 Design Certification Rule would be subject to the requirements of 10 CFR part 52, appendix D. Paragraph VI of 10 CFR part 52, appendix D, establishes the issue finality provisions for the AP1000 design certification and specifically discusses the application of these provisions to ITAAC hearings. Paragraph VIII.B.5.g of 10 CFR part 52, appendix D, establishes a process for parties who believe that a licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information to petition to admit such a contention into the proceeding.[11] Among other things, such a contention must bear on an asserted noncompliance with the ITAAC acceptance criteria and must also comply with the requirements of 10 CFR 2.309. Paragraph VIII.C.5 establishes a process whereby persons who believe that a change must be made to an operational requirement approved in the design control document or a technical specification (TS) derived from the generic TS may petition to admit such a contention into the proceeding if certain requirements, in addition to those set forth in 10 CFR 2.309, are met.

In accordance with 10 CFR 2.309(i), answers to hearing requests are due in 25 days and no replies to answers are permitted. As reflected in 10 CFR 2.309(j)(2), the Commission has decided that it will act as the presiding officer for determining whether to grant the hearing request. In accordance with Section 189a.(1)(B)(iii) of the AEA and 10 CFR 2.309(j)(2), the Commission will expeditiously grant or deny the hearing request. As stated in 10 CFR 2.309(j)(2), this Commission decision may not be the subject of an appeal under 10 CFR 2.311. If a hearing request is granted, the Commission will designate the procedures that govern the hearing as provided by 10 CFR 2.310(j). In accordance with 10 CFR 2.309(g), hearing requests (and by extension answers to hearing requests) are not permitted to address the selection of hearing procedures under 10 CFR 2.310 for an ITAAC hearing.

B. Interim Operation

The AEA provides for the possibility of interim operation, which is operation of the plant pending the completion of an ITAAC hearing. The potential for interim operation arises if the Commission grants a hearing request that satisfies the requirements of Section 189a.(1)(B)(ii) of the AEA. If the hearing request is granted, Section 189a.(1)(B)(iii) of the AEA directs the Commission to allow interim operation if it determines, after considering the petitioners' *prima facie* showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. As is evident from the statutory text, Congress included the interim operation provision to prevent an ITAAC hearing from unnecessarily delaying plant operation if the hearing extends beyond scheduled fuel load.[12] As provided by 10 CFR 52.103(c), the Commission will make the adequate protection determination for interim operation acting as the presiding officer. In accordance with 10 CFR 2.341(a), parties are prohibited from seeking further Commission review of a Commission decision allowing interim operation.

A number of issues concerning interim operation are discussed in SECY–13–0033 and the associated SRM, including the following points relevant to the development of ITAAC hearing procedures:

---

[10] Because the ITAAC were previously approved by the NRC and were subject to challenge as part of the COL proceeding, a challenge to the ITAAC themselves will not give rise to an admissible contention, but the ITAAC could be challenged in a petition to modify the terms and conditions of the COL that is filed under 10 CFR 52.103(f). *See* 2007 Part 52 Rule, 72 FR at 49367 n.3. Because 10 CFR 52.103(f) petitions are outside the scope of the ITAAC hearing process, the 10 CFR 52.103(f) process is outside the scope of this notice.

[11] Tier 2 information is a category of information in a design control document that is incorporated by reference into a design certification rule. The definition of Tier 2 for the AP1000 design certification can be found at 10 CFR part 52, appendix D, paragraph II.E.

[12] The pertinent legislative history supports this view. 138 Cong. Rec. S1686 (February 19, 1992) (statement of Sen. Johnston); S. Rep. No. 102–72 at 296 (1991).

- Because Section 185b. of the AEA requires the Commission to find that the acceptance criteria are met prior to operation, interim operation cannot be allowed until the Commission finds under 10 CFR 52.103(g) that all acceptance criteria are met, including those acceptance criteria that are the subject of an ITAAC hearing.
- The NRC staff proposed, and the Commission approved, that the 10 CFR 52.103(g) finding be delegated to the NRC staff. Among other things, this delegation means that the Commission will not make, in support of interim operation, a merits determination prior to the completion of the hearing on whether the acceptance criteria are met.
- For operational programs and requirements that must be implemented upon a 10 CFR 52.103(g) finding, these programs and requirements would also be implemented in the event that the Commission allows interim operation in accordance with 10 CFR 52.103(c), given that the 10 CFR 52.103(g) finding would be made in support of interim operation.
- As provided by 10 CFR 52.103(h), ITAAC no longer constitute regulatory requirements after the 10 CFR 52.103(g) finding is made. In addition, ITAAC post-closure notifications pursuant to 10 CFR 52.99(c)(2) are only required until the 10 CFR 52.103(g) finding is made. Therefore, ITAAC maintenance activities and associated ITAAC post-closure notifications would no longer be necessary or required after a 10 CFR 52.103(g) finding, including during any period of interim operation.

Another issue addressed in SECY–13–0033 was the subject of extensive comments on the proposed procedures. As stated in SECY–13–0033 and in the proposed procedures, the legislative history of the EPAct indicates that Congress did not intend the Commission to rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that will not present adequate protection concerns during the interim operation period or for which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation.

As discussed in detail in Section 7.B of the Comment Summary Report, some commenters argued that the Commission's adequate protection determination for interim operation could be based on a pre-hearing merits conclusion that the petitioner's *prima facie* showing is incorrect. The primary arguments in support of this position are as follows: (1) The position in SECY–13–0033 inappropriately constrains the Commission's determination on reasonable assurance of adequate protection and is contrary to longstanding interpretations of this broad concept. (2) Resort to the legislative history is inappropriate because the statutory language is clear. (3) Even if it were appropriate to consult the legislative history, the NRC misinterpreted it.

None of these arguments have altered the NRC's position on the proper interpretation of the statutory language. With respect to argument (1), the NRC's position is not based on an interpretation of "reasonable assurance of adequate protection" but on an interpretation of how the petitioner's *prima facie* showing and the answers thereto are to be "consider[ed]" when making the interim operation determination, as directed by Section 189a.(1)(B)(iii) of the AEA. Because the NRC's position is not based on an interpretation of "reasonable assurance of adequate protection," the NRC's position is not contrary to longstanding interpretations of this broad concept. Also, the NRC's position puts no constraints on the Commission's independent judgment in determining whether there is reasonable assurance of adequate protection during interim operation. The Commission will have already exercised its independent judgment on adequate protection matters when it determined that the petitioner made a *prima facie* showing that the operational consequences of not conforming with the acceptance criteria would be contrary to reasonable assurance of adequate protection of the public health and safety. The Commission will consider a different question with regard to interim operation: Whether there is reasonable assurance of adequate protection of the public health and safety during the period of interim operation (for example, because the issue will not arise during the period of interim operation or because the licensee proposed sufficient mitigation measures) notwithstanding the Commission's earlier finding of a *prima facie* showing.

With respect to argument (2), the NRC acknowledges the "plain meaning" canon of statutory interpretation, but does not find it applicable to this statutory provision. The "plain meaning" canon applies only when the words of a statute are "clear and unambiguous." 2A Sutherland Statutes and Statutory Construction, § 46:1 (7th ed. 2007). However, the statutory interim operation provision does not clearly and unambiguously instruct the NRC on how to consider the petitioner's *prima facie* showing when making the interim operation determination. Nothing in the statutory language directs the NRC to make a merits determination on the petitioner's *prima facie* showing. In addition, the statutory provision can be viewed as ambiguous because it can alternatively be interpreted as a specially crafted stay provision focused on the question of irreparable harm (*i.e.,* will the petitioner's adequate protection concerns arise during a period of interim operation). Because the statutory language is not clear and unambiguous as discussed in this paragraph, the plain meaning canon does not apply and it is appropriate to consider the legislative history.

With respect to argument (3), the NRC does not agree that it misinterpreted the relevant legislative history. As discussed in the Comment Summary Report, the interim operation provision reached its final form as part of a Senate floor amendment. This amendment was sponsored, introduced, and explained by Senator Johnston, the floor manager of the bill and the Chairman of the Senate Committee that produced the bill, on the same day that the amendment was adopted by the Senate. Senator Johnston stated that interim operation was intended to be limited and that it was intended to apply where there was no question of safe operation of the plant, such as where the alleged safety concern would not arise during the interim period or where mitigation measures could be taken to avoid the problem during the interim operation period. In an analogous situation, the U.S. Supreme Court treated as authoritative the remarks made by an amendment's sponsor when, as here, the final language resulted from a floor amendment, there was no subsequent Congressional report on the provision, and the amendment's sponsor explained the meaning of the provision on the same day that it was adopted. *North Haven Bd. of Educ.* v. *Bell,* 456 U.S. 512, 526–27 (1982). Consequently, it is appropriate for the NRC to give substantial weight to Senator Johnston's remarks on the meaning of the interim operation provision. Interpreting Senator Johnston's remarks in light of the statutory language he was discussing, it is clear that the "question about safe operation of the plant" refers to the petitioner's *prima facie* showing that operation is contrary to reasonable assurance of adequate protection of the public health and safety. Therefore, Senator Johnston's evident intent was that the Commission's adequate protection determination for interim operation would not be a merits determination that the petitioner's *prima facie* showing is, in fact, incorrect. In addition, the examples given by Senator Johnston of when interim operation would be appropriate contemplate that the Commission would make the adequate protection determination while accounting for the possibility that the petitioner's *prima facie* showing might be correct.

Also, as discussed in the Comment Summary Report, an earlier version of the legislation directed the NRC to make a preliminary merits determination as part of its interim operation decision, but this preliminary merits determination language was later removed from the bill by the Senate amendment just discussed. Consistent with U.S. Supreme Court precedent, this removal of the preliminary merits determination language should be regarded as a decision by Congress to take a different approach. *See INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 442–43 (1987) ("Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." (citations omitted)); *Hamdan* v. *Rumsfeld,* 548 U.S. 557, 579–80 (2006) ("Congress' rejection of the very language that would have achieved the result the Government urges here weighs heavily against the Government's interpretation.").

In its comments, NEI states that Congress might have removed the preliminary merits determination language to afford the Commission maximum flexibility in making the adequate protection determination for interim operation. However, NEI offers no evidence for its view, and NEI's claim is contradicted by the legislative history. Senator Johnston explained that the changes made to the bill by Senate Amendment Number 1575 were intended to address concerns that Senators had about the bill. 138 Cong. Rec. S1143 (Feb. 6, 1992). Senator Johnston went on to state that "[t]he authority to allow interim operation is limited" and that interim operation was intended to apply to situations "where there is no question about the safe operation of the plant." 138 Cong. Rec. S1143, S1173 (Feb. 6, 1992).

Thus, in light of the relevant legislative history, the NRC has determined that the adequate protection determination for interim operation is not intended to be a merits determination on the petitioner's *prima facie* showing. Nevertheless, the answers to the petitioner's hearing request are relevant to, and important for making, the adequate protection determination for interim operation. The answers filed by the licensee and the NRC staff could be considered in determining whether the *prima facie* showing has been made and to which aspects of operation the *prima facie* showing applies—such as whether the adequate protection concern is one of long-term safety or the concern only implicates adequate protection at certain operational levels (*e.g.,* at greater than five percent power). The licensee's answer might also propose mitigation measures with an explanation of how reasonable assurance of adequate protection would be maintained during an interim period even if the petitioner's *prima facie* showing proves to be correct.

C. Initial Decision

After the completion of an ITAAC hearing, the presiding officer will issue an initial decision pursuant to 10 CFR 2.340(c) on whether the acceptance criteria have been or will be met. As provided by 10 CFR 2.340(f), an initial decision finding that acceptance criteria in a COL have been met is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective. In accordance with 10 CFR 2.340(j), the Commission or its delegate (*i.e.,* the NRC staff) will make the 10 CFR 52.103(g) finding within 10 days from the date of issuance of the initial decision, if:

(1) The Commission or its delegate can find that the acceptance criteria not within the scope of the initial decision are met,

(2) the presiding officer has issued a decision that the contested acceptance criteria have been met or will be met, and the Commission or its delegate can thereafter find that the contested acceptance criteria are met, and

(3) notwithstanding the pendency of a 10 CFR 2.345 petition for reconsideration, a 10 CFR 2.341 petition for review, a 10 CFR 2.342 stay motion, or a 10 CFR 2.206 petition.

Section 2.340(j) is intended to describe how the 10 CFR 52.103(g) finding may be made after an initial decision by the presiding officer that the acceptance criteria have been, or will be, met. However, in amending 10 CFR 2.340(j) in the ITAAC Maintenance Rule, the Commission stated (77 FR at 51885–86) that 10 CFR 2.340(j) was being amended to "clarify some of the possible paths" for making the 10 CFR 52.103(g) finding after the presiding officer's initial decision and that 10 CFR 2.340(j) "is not intended to be an exhaustive 'roadmap' to a possible 10 CFR 52.103(g) finding that acceptance criteria are met." Thus, there may be situations in which the mechanism and circumstances described by 10 CFR 2.340(j) are not wholly applicable. For example, if interim operation is allowed, then the 10 CFR 52.103(g) finding will have been made prior to the initial decision. In such a case, there is no need for another 10 CFR 52.103(g) finding after an initial decision finding that the contested acceptance criteria have been met because the initial decision will have confirmed the correctness of the 10 CFR 52.103(g) finding with respect to the contested acceptance criteria.[13]

V. General Approach to ITAAC Hearing Procedure Development

With these procedures, the NRC has attempted to develop an efficient and feasible process that is consistent with previously established law, regulation, and policy and that will allow the presiding officer and the parties a fair opportunity to develop a sound record for decision. To achieve this objective, the NRC has used the following general approach.

A. Use of Existing Part 2 Procedures

The procedures described in this document are based on the NRC's rules of practice in 10 CFR part 2, modified as necessary to conform to the expedited schedule and specialized nature of ITAAC hearings. The ITAAC hearing procedures have been modeled on the existing rules of practice because the existing rules have proven effective in promoting a fair and efficient process in adjudications and there is a body of precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures if they are already familiar with the existing rules.

---

[13] Other scenarios not covered by 10 CFR 2.340(j) include those in which the presiding officer does not find that the acceptance criteria have been or will be met, a decision that might be made after a period of interim operation has been authorized. How a negative finding by the presiding officer would be resolved by a licensee, and the effect such a finding would have on interim operation, would depend on the facts of the case and the nature of the presiding officer's decision. Therefore, such eventualities are not further addressed in these generic procedures.

B. Choice of Presiding Officer To Conduct an Evidentiary Hearing

As explained in Section III.G of this document, the NRC has decided that for evidentiary hearings, an ASLB or a single legal judge (assisted as appropriate by technical advisors) will preside over the hearing. The case-specific choice on whether to employ an ASLB or a single legal judge for an evidentiary hearing will ordinarily be made by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel after the Commission grants the hearing request. However, the Commission retains the option of choosing who will conduct the evidentiary hearing in each proceeding. To ensure that the selected presiding officer can upon designation immediately commence work on evidentiary hearing activities, the Chief Administrative Judge will be expected to identify, within a reasonable period of time prior to the Commission's decision on the hearing request, administrative judges who might be selected to serve as the presiding officer. The Commission expects the selected judges to familiarize themselves with the ITAAC hearing procedures and the participants' pleadings before a decision on the hearing request.

C. Schedule

As explained earlier, Section 189a.(1)(B)(v) of the AEA provides that the Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel into the reactor, whichever is later. While the AEA does not require that the hearing be completed by the later of these two dates in all cases, the procedures described in this notice have been developed with the intent of satisfying the statutory goal for timely completion of the hearing. However, there may be cases where the ITAAC hearing extends beyond scheduled initial fuel load because of unusual situations or because of circumstances beyond the control of the NRC.

Because the Commission intends to publish the notice of intended operation at least 210 days before scheduled initial fuel load, the later of the two dates identified in Section 189a.(1)(B)(v) of the AEA will, in practice, be scheduled initial fuel load. If the notice of intended operation is issued 210 days before scheduled fuel load, 85 days will be consumed by the 60-day period for filing hearing requests and the 25-day period for filing answers to hearing requests. Thus, meeting the statutory goal for completing the hearing will ordinarily require that the NRC be able to determine whether to grant the hearing request, hold a hearing on any admitted contentions, and render a decision after hearing within 125 days of the submission of answers to hearing requests.[14]

To meet the statutory objective for timely completion of the hearing, the NRC must complete the hearing process much faster than is usually achieved in NRC practice for other hearings. However, the ITAAC hearing process is different from other NRC hearings in that the contested issues will be narrowly constrained by the terms of the ITAAC and the required *prima facie* showing. In addition, the NRC anticipates that with the required *prima facie* showing and the answers thereto, the parties will have already substantially established their hearing positions and marshalled their supporting evidence. Furthermore, the parties' initial filings, in conjunction with other available information (including licensee ITAAC notifications describing the completion, or the plans for completing, each ITAAC), will provide the parties with at least a basic understanding of the other parties' positions from the beginning of the proceeding.

Given the differences between an ITAAC hearing and other NRC hearings, the NRC took several steps to expedite the ITAAC hearing process. The most important step is that the hearing preparation period will begin as soon as the hearing request is granted. In other NRC proceedings associated with license applications, hearing requests are due soon after the license application is accepted for NRC staff review, and the preparation of pre-filed written testimony and position statements does not begin until months or years later, after the NRC staff completes its review. However, the parties to an ITAAC hearing can begin preparing their testimony and position statements as soon as a hearing request is granted given the focused nature of an ITAAC hearing and given the information and evidence already available to, and established by, the parties at that point in the proceeding. Beginning the hearing preparation process upon the granting of a hearing request is expected to dramatically reduce the length of the hearing process, which should reduce overall resource burdens on participants in the hearing.

Another important step is to eliminate procedures from the hearing process that are time-consuming, resource-intensive, and unnecessary under the particular circumstances of an ITAAC proceeding. For example, because the hearing will be concluded within a few months of the granting of a hearing request, there is little purpose served by summary disposition motions and contested motions to dismiss.[15] In addition, by preparing ahead of time detailed procedures for the conduct of ITAAC hearings, the NRC is avoiding delays that might occur if the presiding officer needed to make ad hoc decisions on how to address foreseeable issues that could have been considered earlier.

Even with the steps just described, meeting the statutory directive to expeditiously complete the ITAAC hearing will require the parties to exercise a high degree of diligence in satisfying their obligations as participants in the hearing. To instill discipline with respect to meeting the hearing schedule, the ITAAC hearing procedures provide that the Commission, when imposing procedures for the conduct of the hearing, will set a strict deadline for the issuance of a presiding officer's initial decision after the hearing. This strict deadline, which will be a calendar date, can only be extended upon a showing that "unavoidable and extreme circumstances"[16] necessitate the delay. This strict deadline provision, which will be included whether the Commission, an ASLB, or a single legal judge is the presiding officer, will serve to prevent delays in the hearing decision, including delays in any intermediate step of the hearing process that might delay the hearing decision.

In addition, the ITAAC hearing procedures shorten a number of deadlines from those provided by current regulations. While this will require greater alertness and efficiency on the part of hearing participants, the deadlines in these procedures are feasible, and the burden on participants will be somewhat ameliorated by the focused nature of ITAAC hearings. Also, a shorter hearing period at the end of construction should lessen the overall resource burden on participants, which may be advantageous to participants with limited financial resources.[17]

---

[14] A licensee is required by 10 CFR 52.103(a) to notify the NRC of its scheduled date for initial fuel load no later than 270 days before the scheduled date and to update its schedule every 30 days thereafter. While the licensee can, consistent with 10 CFR 52.103(a), move up its scheduled fuel load date after the notice of intended operation is published, such a contraction in the licensee's fuel load schedule would have no effect on the hearing schedule for the reasons given in Section 5.G of the Comment Summary Report. For the purpose of meeting the Section 189a.(1)(B)(iii) of the AEA directive to expeditiously complete the hearing, the "anticipated date for initial loading of fuel" is set once the notice of intended operation is issued and cannot thereafter be moved up. However, as a practical matter, the NRC would consider such a contraction in the licensee's schedule as part of its process for making the 10 CFR 52.103(g) finding and the adequate protection determination for interim operation.

[15] However, to avoid holding a hearing unnecessarily, joint motions to dismiss that are agreed to by all parties will be entertained.

[16] This standard is taken from the Policy on Conduct of Adjudicatory Proceedings, CLI–98–12, 48 NRC 18, 21 (1998).

The procedures in this notice have been developed on the assumption that the notice of intended operation will be issued 210 days before scheduled fuel load. There is a practical difficulty with issuing the notice of intended operation earlier than 210 days before scheduled fuel load: Uncompleted ITAAC notifications are not required to be submitted until 225 days before scheduled fuel load. Until these uncompleted ITAAC notifications are received, members of the public will not have a basis on which to file contentions with respect to uncompleted ITAAC. Thus, the notice of intended operation cannot be issued until after the receipt and processing of all uncompleted ITAAC notifications. Nevertheless, if a licensee voluntarily submits all uncompleted ITAAC notifications somewhat earlier than 225 days before scheduled initial fuel load, then the notice of intended operation could be issued earlier. Early issuance of the notice of intended operation might facilitate the completion of the hearing by scheduled fuel load notwithstanding the occurrence of some event that would otherwise cause delay.

As discussed in Section 5.B of the Comment Summary Report, the licensees currently constructing the Vogtle and V.C. Summer reactors have stated in their written comments that it is feasible to submit uncompleted ITAAC notifications several months earlier than required. Given this statement, and given the schedule advantages accruing from early publication of the notice of intended operation, the NRC has decided to publish the notice of intended operation up to 75 days earlier than 210 days before scheduled fuel load (*i.e.,* 285 days before scheduled fuel load) based on the licensee's voluntary early submission of the uncompleted ITAAC notifications. However, early publication of the notice of intended operation will only occur if the NRC has received either an uncompleted ITAAC notification or an ITAAC closure notification for every ITAAC. With early publication, all dates in the hearing schedule would be moved up accordingly.

The NRC will attempt to publish the notice of intended operation 15 days after it has received uncompleted ITAAC notifications covering all ITAAC that have not yet been completed. To make early publication of the notice of intended operation efficient and effective, some additional practical steps must be taken:

- In addition to meeting the requirements of 10 CFR 52.103(a), the licensee will need to informally apprise the NRC of the licensee's fuel load schedule well enough in advance to allow the NRC to prepare to issue the notice of intended operation on a more expedited basis.
- The NRC will not publish the notice of intended operation until the licensee has submitted a 10 CFR 52.103(a) fuel load schedule. Therefore, the licensee should submit this 10 CFR 52.103(a) schedule with its last uncompleted ITAAC notification if the licensee has not already done so.
- The uncompleted ITAAC notifications will need to specify the coverage period of the uncompleted ITAAC notifications (*i.e.,* "intended to cover all ITAAC not completed by [X] days before scheduled fuel load"). If a coverage period is not specified, the NRC will assume that the coverage period begins 225 days before scheduled fuel load as specified by 10 CFR 52.99(c)(3).
- Any ITAAC completed before the specified coverage period will not be the subject of an uncompleted ITAAC notification but will be the subject of an ITAAC closure notification.

D. Hearing Formats

The hearing format used to resolve admitted contentions depends, in the first instance, on whether testimony will be necessary to resolve the contested issues. While testimony is employed in most NRC hearings because contentions usually involve issues of fact, the NRC sometimes admits legal contentions (*i.e.,* contentions that do not involve a dispute of fact but raise only legal issues). *See* (*e.g.,* U.S. Department of Energy (High-Level Waste Repository), CLI–09–14, 69 NRC 580, 588–591 (2009)). The procedures for legal contentions, which are explained in more detail later in this notice, will involve the Commission setting a briefing schedule at the time it grants the hearing request, with the briefing schedule determined on a case-by-case basis.

Hearings involving testimony are necessarily more complex. A threshold question for such hearings is whether testimony should be delivered entirely orally, delivered entirely in written form, or as in the case of proceedings under subpart L of 10 CFR part 2, delivered primarily in written form with an oral hearing being used primarily to allow the presiding officer to gain a better understanding of the testimony and to clarify the record. For the following reasons, the NRC believes that the best choice is the subpart L approach, which is the most widely used approach in NRC hearings and which has demonstrated its effectiveness since implementation in its current form in 2004.

The subpart L approach has many benefits. Written testimony and statements of position allow the parties to provide their views with a greater level of clarity and precision, which is important for hearings on technical matters. With the positions of the parties clearly established, oral questions and responses can be used to quickly and efficiently probe the positions of the parties. The use of oral questions and responses is more efficient than written questions and responses because oral questioning allows for back-and-forth communication between the presiding officer and the witnesses that can be completed more quickly than written questioning. In addition, the submission of testimony prior to the oral hearing increases the quality of the oral hearing because it allows more time for the presiding officer to thoughtfully assess the testimony and carefully craft questions that will best elucidate those matters crucial to the presiding officer's decision. Finally, certain efficiencies can be gained by the use of written testimony that are not available with entirely oral testimony. In subpart L proceedings, pre-filed written testimony and exhibits are often admitted en masse at the beginning of the oral hearing, and the presiding officer's questioning can be completed in a relatively short amount of time. In the absence of pre-filed written testimony, however, an oral hearing would consume more time because the entirety of the evidentiary record would need to be established sequentially and orally, and the admission of exhibits would be subject to the more cumbersome and time-consuming admission process typical of trials.

---

[17] For example, several litigation processes, such as summary disposition motions and written motions *in limine,* have been eliminated. Also, petitioners will not need to follow the substantial volume of licensee-NRC staff correspondence that would be expected over a several-year application period to determine whether to file new or amended contentions. Further, with a shorter hearing process at the end of construction, fewer events should occur that might give rise to new or amended contentions, and the parties' mandatory disclosures should consume fewer resources.

The NRC considered, but rejected, a hearing format based on the procedures in 10 CFR part 2, subpart N, "Expedited Proceedings with Oral Hearings." As the Commission explained in the final rule entitled "Changes to Adjudicatory Process" (69 FR 2182, 2214–15; January 14, 2004), subpart N is intended to be a " 'fast track' process for the expeditious resolution of issues in cases where the contentions are few and not particularly complex, and therefore may be efficiently addressed in a short hearing using simple procedures and oral presentations." In addition, "the [subpart N] procedures were developed to permit a quick, relatively informal proceeding where the presiding officer could easily make an oral decision from the bench, or in a short time after conclusion of the oral phase of the hearing." At this time, before the first ITAAC hearing commences, the NRC does not have sufficient experience to conclude that the issues to be resolved in an ITAAC hearing will be simple enough to profitably employ the procedures of subpart N and forego the advantages accruing from written testimony and statements of position.

The NRC also did not adopt a legislative hearing track because, as the NRC has previously determined and as described in Section 5.E of the Comment Summary Report, legislative hearings are well suited to the development of "legislative facts" (*i.e.*, general facts relating to questions of policy and discretion) and are not well suited to resolving either legal issues or disputes of fact relating to the occurrence of a past event. Because an ITAAC hearing will involve a focused inquiry regarding detailed technical questions, the NRC does not believe that the legislative hearing format is tailored to resolve these questions.

Nonetheless, the Commission will continue to look for ways to enhance the ITAAC hearing process going forward and will examine whether these, or other approaches, could result in an improved process after conducting the first ITAAC hearings.

VI. Final General ITAAC Hearing Procedures

Employing the general approach described in the previous section, the NRC has developed four templates with procedures for the conduct of an ITAAC hearing. These templates were provided with the proposed procedures in draft form for comment and have been revised to reflect changes to the proposed procedures that are described in Section III of this notice. The first template, Final Template A, "Notice of Intended Operation and Associated Orders" (ADAMS Accession No. ML16167A469), includes the notice of intended operation, which informs members of the public of their opportunity to file a hearing request, includes an order imposing procedures for requesting access to SUNSI and SGI for the purposes of contention formulation (SUNSI–SGI Access Order),[18] and includes an order imposing additional procedures specifically pertaining to an ITAAC hearing.

The second, third, and fourth templates (Templates B, C, and D) are for Commission orders imposing procedures after the Commission has made a determination on the hearing request. Specifically, the second template, Final Template B "Procedures for Hearings Involving Testimony" (ADAMS Accession No. ML16167A471), includes procedures for the conduct of a hearing involving testimony. The third template, Final Template C "Procedures for Hearings Not Involving Testimony" (ADAMS Accession No. ML16167A475), includes procedures for resolving legal contentions. The fourth template, Final Template D "Procedures for Resolving Claims of Incompleteness" (ADAMS Accession No. ML16167A479), includes procedures for resolving valid claims of incompleteness.

One issue not addressed by the templates is the potential for delay caused by the need to undergo a background check (including a criminal history records check) for access to SGI. This background check can take several months, and delay could occur if the persons seeking access to SGI are not already cleared for access and do not seek clearance until the notice of intended operation is issued. However, the "Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information" (SUNSI–SGI Access Procedures) (February 29, 2008) (ADAMS Accession No. ML080380626) provide a "pre-clearance" process, by which a potential party who might seek access to SGI is allowed to request initiation of the necessary background check in advance of the notice providing an opportunity to request a hearing. Therefore, to avoid the potential for delays from background checks, the NRC contemplates that a plant-specific **Federal Register** notice announcing a pre-clearance process would be published 420 days before scheduled fuel load, based on the licensee's estimate at the time, which would be at least 135 days prior to the expected publication of the notice of intended operation for that plant.

This pre-clearance notice will state that the required background check forms and fee should be submitted within 20 days of the notice to allow enough time for the completion of the background check prior to the publication of the notice of intended operation. This "pre-clearance notice" will also inform potential parties that the NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI. In other words, members of the public will have to take the proceeding as they find it once they ultimately obtain access to SGI for contention formulation. The pre-clearance process is designed to prevent the SGI background-check process from becoming a barrier to timely public participation in the hearing process. As stated in Attachment 1 to the SUNSI–SGI Access Procedures (p. 11), "given the strict timelines for submission of and rulings on the admissibility of contentions (including security-related contentions) . . . potential parties should not expect additional flexibility in those established time periods if they decide not to exercise the pre-clearance option."

In the following subsections, this notice provides a broad overview of the procedures and addresses certain significant procedures described in the templates. Certain procedures of lesser significance, and the rationales therefor, are described solely in the templates.

A. Notice of Intended Operation

The **Federal Register** notice of intended operation, the contents of which are governed by 10 CFR 2.105, will provide that any person whose interest may be affected by operation of the plant, may, within 60 days, request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL. Among other things, the notice of intended operation (1) will specifically describe how the hearing request and answers thereto may be filed, (2) will identify the standing, contention admissibility, and other requirements applicable to the hearing request and answers thereto, and (3) will identify where information that is potentially relevant to a hearing request may be obtained. The notice of intended operation also will establish a milestone of 30 days after the answers for a Commission ruling on the hearing request. This milestone is consistent with the statutory directive that rulings on hearing requests be made expeditiously and is necessary to allow sufficient time for the hearing if the request is granted. In addition, the notice of intended operation will be accompanied by a SUNSI–SGI Access Order and an order imposing additional procedures specifically pertaining to an ITAAC hearing (Additional Procedures Order). The following subsections describe the significant procedures included in the notice of intended operation template.

---

[18] SUNSI–SGI Access Orders accompany hearing notices in cases where the NRC believes that a potential party may deem it necessary to obtain access to SUNSI or SGI for the purposes of meeting Commission requirements for intervention. *See* 10 CFR 2.307(c). Given the range of matters covered by the ITAAC, it is appropriate to issue a SUNSI–SGI Access Order with the notice of intended operation.

1. Prima Facie Showing

To obtain a hearing on whether the facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, Section 189a.(1)(B)(ii) of the AEA provides that a petitioner's request for hearing shall show, *prima facie,* that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This requirement is implemented in 10 CFR 2.309(f)(1)(vii), which requires this *prima facie* showing as part of the contention admissibility standards. Without meeting this requirement, the contention cannot be admitted and the hearing request cannot be granted.

In making this *prima facie* showing, the Additional Procedures Order will state that any declaration of an eyewitness or expert witness offered in support of contention admissibility needs to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

2. Claims of Incompleteness

While a *prima facie* showing is required before a contention can be admitted and a hearing request granted, 10 CFR 2.309(f)(1)(vii) provides a process for petitioners to claim that the licensee's 10 CFR 52.99(c) report is incomplete and that this incompleteness prevents the petitioner from making the necessary *prima facie* showing. The petitioner must identify the specific portion of the licensee's 10 CFR 52.99(c) report that is incomplete and explain why this deficiency prevents the petitioner from making the necessary *prima facie* showing.[19] Final Template A includes more detail on the standards for claims of incompleteness. If the Commission determines that the claim of incompleteness is valid, then it will issue an order, described later in this notice, requiring the licensee to provide the additional information and providing a process for the petitioner to file a contention based on the additional information. If the petitioner files an admissible contention thereafter, and all other hearing request requirements have been met, then the hearing request will be granted.

Before filing a claim of incompleteness, the petitioner is required to consult with the licensee regarding access to the purportedly missing information. Consultation may obviate the need for petitioners to file, or the Commission to rule on, claims of incompleteness. Therefore, consultation could shorten the hearing schedule and conserve participants' and the Commission's resources. The NRC has also imposed procedures addressing the possibility that a petitioner will seek SUNSI or SGI from the licensee. Additional discussion of the consultation and the SUNSI–SGI access provisions is in Section III.D of this document and Sections 4.E and 4.I of the Comment Summary Report.

3. Interim Operation

As stated earlier, the AEA requires the Commission to determine, after considering the petitioner's *prima facie* showing and answers thereto, whether there is reasonable assurance of adequate protection of the public health and safety during a period of interim operation while the hearing is being completed. The Commission's adequate protection determination for interim operation is not to be based on a merits determination with respect to the petitioner's *prima facie* showing or any 10 CFR 52.103(g) finding by the NRC staff. A statement to this effect will be included in any Commission adequate protection determination.

Because the adequate protection determination for interim operation is based on the participants' initial filings, the notice of intended operation will specifically request information from the petitioners, the licensee, and the NRC staff regarding the time period and modes of operation during which the adequate protection concern arises and any mitigation measures proposed by the licensee. The notice of intended operation will also inform the petitioners, the NRC staff, and the licensee that, ordinarily, their initial filings will be their only opportunity to address adequate protection during interim operation.

Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which the proponent relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support provided by the proponent, including the qualifications and experience of each expert.

If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination. If the Commission makes determinations that additional briefing is necessary on the adequate protection determination, then it will issue a briefing order concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission will issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.[20]

---

[19] For claims of incompleteness, the "incompleteness" refers to a lack of required information in a licensee's ITAAC notification, not to whether the ITAAC has yet to be completed. Thus, a valid claim of incompleteness with respect to an uncompleted ITAAC notification must identify, among other things, an insufficient description in the notification of how the licensee will successfully complete the ITAAC.

[20] Because an interim operation determination is necessary only if contentions are admitted, it makes sense to have additional briefing on licensee-proposed mitigation measures only after a decision on the hearing request. However, as explained later, a different process applies to contentions submitted after the hearing request is granted because of the greater need for an expedited decision on interim operation.

The Commission is reserving its flexibility to make the interim operation determination at a time of its discretion. Since the purpose of the interim operation provision is to prevent the hearing from unnecessarily delaying fuel load, the Commission intends to make the interim operation determination by scheduled fuel load.

If the Commission determines that there is adequate protection during the period of interim operation, a request to stay the effectiveness of this decision will not be entertained. The interim operation provision serves the purpose of a stay provision because it is the Congressionally-mandated process for determining whether the 10 CFR 52.103(g) finding that the acceptance criteria are met will be given immediate effect. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the 10 CFR 52.103(g) finding and issues an order allowing interim operation.

To provide guidance on the relationship between the interim operation provision and the 10 CFR 52.103(g) finding, the Commission is describing when interim operation might be allowed and when the 10 CFR 52.103(g) finding might be made in the following scenarios. These scenarios all assume that the NRC staff has been able to determine by scheduled fuel load that all acceptance criteria are met and that any initial decision after hearing has found conformance with the acceptance criteria.

(1) If the initial decision after the hearing is issued before scheduled fuel load, then there will no interim operation by definition (*i.e.,* interim operation is defined as operation pending the completion of the hearing). The making of the 10 CFR 52.103(g) finding after the initial decision will be governed by 10 CFR 2.340(j), as applicable.

(2) If the initial decision is not issued before scheduled fuel load, then interim operation will be allowed if the NRC staff has made the 10 CFR 52.103(g) finding and the Commission has made a positive adequate protection determination for interim operation for all admitted contentions. Interim operation will be allowed in this circumstance notwithstanding the pendency of any pleading, including a stay request.

(3) If the initial decision is not issued before scheduled fuel load, and the Commission has not made a positive adequate protection determination for interim operation for all admitted contentions, then the NRC staff will wait to issue the 10 CFR 52.103(g) finding until the earlier of (1) the issuance of the initial decision after the hearing, or (2) the Commission's issuance of a positive adequate protection determination for interim operation on all admitted contentions. If the Commission has made a negative interim operation determination for one or more contentions, then the NRC staff will wait to issue the 10 CFR 52.103(g) until after the completion of the hearing on those contentions. There does not appear to be any benefit from making the 10 CFR 52.103(g) finding during the pendency of the hearing without a positive adequate protection determination for all admitted contentions because the 10 CFR 52.103(g) finding could not be given immediate effect with respect to allowing operation. In addition, a number of regulatory and license provisions pertaining to operation, including the 40-year term of the license and the implementation of technical specifications and other operational programs, are triggered by the 10 CFR 52.103(g) finding. Because the plant would not be able to operate in such a scenario, it would not make sense to trigger these other operation-related requirements.

(4) If there are no admitted contentions, the NRC staff can make the 10 CFR 52.103(g) finding notwithstanding the pendency of any pleading, including appeals, motions to reopen, stay requests, or proposed new or amended contentions filed after the deadline. As a general matter, the mere filing of a pleading does not serve to stay any action. In addition, the structure of the COL provisions in Sections 185b. and 189a.(1)(B) of the AEA indicates that operation is automatically stayed only if the Commission has granted a hearing request but the hearing on the contention has not been completed. An automatic stay in this circumstance makes sense because the Commission will have determined that the petitioner made the required *prima facie* showing (*i.e.,* a robust showing of, among other things, a significant safety problem at some point during reactor operation). The interim operation provision allows operation during the pendency of the hearing if the Commission determines that this possible harm does not apply, or can be mitigated, during the period of interim operation that is contemplated. In this regard, the interim operation provision is a special type of stay provision specially crafted for ITAAC hearings and focused on the issue of irreparable harm. However, in the absence of an admitted contention (*i.e.,* in the absence of a Commission determination that the petitioner has made the required *prima facie* showing), there has been no Commission determination of a robust showing of possible harm during operation, and the interim operation provision does not come into effect.[21] Therefore, in the absence of an admitted contention and unless directed otherwise by the Commission, the 10 CFR 52.103(g) finding can be made and will be given effect.

4. Hearing Requests, Intervention Petitions, and Motions for Leave To File New or Amended Contentions or Claims of Incompleteness After the Original Deadline

The notice of intended operation includes procedures governing hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline because such filings might be made between the deadline for hearing requests and a Commission decision on hearing requests. Filings after the initial deadline must show good cause as defined by 10 CFR 2.309(c), which includes the 10 CFR 2.309(c)(1)(iii) requirement that the filing has been submitted in a timely fashion based on the availability of new information. In other proceedings, licensing boards have typically found that 10 CFR 2.309(c)(1)(iii) is satisfied if the filing is made within 30 days of the availability of the information upon which the filing is based, and 10 CFR 2.309(i)(1) allows 25 days to answer the filing. The NRC believes that timeliness expectations should be clearly stated in the notice of intended operation, but is shortening these time periods in the interest of expediting the proceeding.

As discussed in Section 4.J of the Comment Summary Report, the NRC has decided that the deadline for hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline will be 20 days after the event giving rise to the need for the filing. In the context of claims of incompleteness, this 20-day period will be triggered by the date that the ITAAC notification (or a redacted version thereof) becomes available to the public. Answers to these filings will be due 14 days thereafter. Notwithstanding these deadlines, the NRC encourages participants to file as soon as possible before these deadlines if it is possible for them to do so.

---

[21] As is stated in the AEA, the interim operation provision only comes into force "[i]f the [hearing] request is granted." Section 189a.(1)(B)(iii) of the AEA.

The Commission would also need to consider issues associated with interim operation with respect to any grant of a hearing request, intervention petition, or new or amended contention filed after the original deadline. Therefore, the interim operation provisions described previously will also apply to hearing requests, intervention petitions, or new or amended contentions filed after the original deadline. A claim of incompleteness, however, does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing. Interim operation would be addressed after any incompleteness was cured if the petitioner files a contention on that topic.

In its 2008 Policy Statement (73 FR at 20973), the Commission stated that to lend predictability to the ITAAC compliance process, it would be responsible for three decisions related to ITAAC hearings: (1) The decision on whether to grant the hearing request, (2) the adequate protection determination for interim operation, and (3) the designation of the ITAAC hearing procedures. Accordingly, the NRC believes that it would be consistent with this policy choice for the Commission to rule on all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures and schedule for the newly admitted contentions and would determine whether there will be adequate protection during the period of interim operation with respect to the newly admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 CFR 2.309(f)(1)(vii), the Commission would designate separate procedures for resolving the claim.

For motions for leave to file amended contentions, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission will have provided direction on the admissibility of the relevant issues when it ruled on the original contention. Thus, the Commission will retain the option of delegating rulings on amended contentions to an ASLB or a single legal judge (assisted as appropriate by technical advisors). If the Commission rules on the admissibility of the amended contention, the Commission may revise the existing hearing schedule as appropriate. If the Commission delegates a contention admissibility ruling and the presiding officer admits the amended contention, then the Commission will still make the adequate protection determination for interim operation. In addition, the Commission-imposed procedures governing the adjudication of the original contention will apply to the amended contention if admitted by the presiding officer. Furthermore, the deadline for an initial decision on the amended contention (which is a strict deadline) will remain the same as the deadline for an initial decision on the original contention.[22]

Because the Commission would be ruling on (or delegating a ruling on) all hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline, all such filings after the original deadline would be filed with the Commission. The Commission contemplates that a ruling would be issued within 30 days of the filing of answers.

5. SUNSI–SGI Access Order

The SUNSI–SGI Access Order included with the notice of intended operation is based on the template for the SUNSI–SGI Access Order that is issued in other proceedings, with the following modifications:

- To expedite the proceeding, initial requests for access to SUNSI or SGI must be made electronically by email, unless use of email is impractical, in which case delivery of a paper document must be made by overnight mail. All other filings in the proceeding must be made through the E-filing system with certain exceptions described later in this notice.
- To expedite the proceeding, the expectation for NRC staff processing of documents and the filing of protective orders and non-disclosure agreements has been reduced from 20 days after a determination that access should be granted to 10 days.
- As with SUNSI–SGI Access Orders issued in other proceedings, requests for access to SUNSI or SGI must be submitted within 10 days of the publication of the **Federal Register** notice, and requests submitted later than this period will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier. For the purposes of the SUNSI–SGI Access Order issued with the notice of intended operation, the showing of good cause has been defined as follows: The requestor must demonstrate that its request for access to SUNSI or SGI has been filed by the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.
- Consistent with the time period described previously for new or amended contentions after the deadline, the SUNSI–SGI Access Order provides that any contentions based on the requested SUNSI or SGI must be filed no later than 20 days after the requestor receives access to that information, except that such contentions may be filed with the initial hearing request if more than 20 days remain between receiving access to the information and the deadline for the hearing request.
- The NRC has reduced the time period for challenges to NRC staff determinations on access to SGI (and responses to such challenges) to expedite the proceeding and to be consistent with the time period for interlocutory appeals on access to SUNSI and SGI.
- Challenges to NRC staff determinations on SUNSI–SGI access under the SUNSI–SGI Access Order are to be filed with the Chief Administrative Judge, who will assign a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. The NRC has decided that a single legal judge should preside over such challenges because an administrative judge is particularly suited to expeditiously resolving questions of this kind, and a single legal judge may be able to issue a decision on a more expedited basis. If the challenge relates to an adverse determination by the NRC's Office of Administration on trustworthiness and reliability for access to SGI, then consistent with 10 CFR 2.336(f)(1)(iv), neither the single legal judge chosen to rule on such challenges nor any technical advisors supporting a ruling on the challenge can serve as the presiding officer for the proceeding.
- In cases where there is a dispute over access to SUNSI or SGI that was resolved by a presiding officer, the

---

[22] The presiding officer should strive to meet the strict deadline, but if unavoidable and extreme circumstances require an extension of the strict deadline, then the presiding officer may extend that deadline in accordance with the procedures set forth in the case-specific procedural order.

presiding officer for the issuance of protective orders and other related matters will be the same as the presiding officer that heard the dispute over access. In cases where there is no access dispute but a presiding officer is needed for protective orders or other related matters, the Chief Administrative Judge will choose a presiding officer for such matters.

6. Filing of Documents and Time Computation

To support the expedited nature of this proceeding, the provisions in 10 CFR 2.302 and 10 CFR 2.305 for the filing and service of documents are being modified such that, for requests to file documents other than through the E-Filing system, first-class mail will not be one of the allowed alternative filing methods. The possible alternatives will be limited to transmission either by fax, email, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax or email is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if separated into smaller files, the filer must segment the document and file the segments separately. In a related modification, the time computation provisions in 10 CFR 2.306(b)(1) through 2.306(b)(4), which allow additional time for responses to filings made by mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.

7. Motions

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in 10 CFR part 2, subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, and answers to motions shall be filed within 7 days of the motion.

Motions for extension of time will be allowed, but good cause must be shown for the requested extension of time based on an event occurring before the deadline. To meet the statutory mandate for the timely completion of the hearing, deadlines must be adhered to strictly and only exceptional circumstances should give rise to delay. Therefore, in determining whether there is good cause for an extension, the factors in 10 CFR 2.334 will be considered, but "good cause" will be interpreted strictly, and a showing of "unavoidable and extreme circumstances" will be required for any extension, no matter how minor.

Motions for extension of time shall be filed as soon as possible but no later than 3 days before the deadline, with one limited exception. If the petitioner is unable to file an extension request by 3 days before the deadline, then the petitioner must (1) file its request as soon as possible thereafter, (2) demonstrate that unavoidable and extreme circumstances prevented the petitioner from filing its extension request by 3 days before the deadline, and (3) demonstrate that the petitioner filed its extension request as soon as possible thereafter.[23]

Motions for reconsideration will only be entertained for a presiding officer's initial decision and Commission decisions on appeal of a presiding officer's initial decision. These are the most important decisions in the proceeding, and reconsideration of these decisions does not prevent them from taking effect. Reconsideration is not permitted in other circumstances because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review, and rule on requests for reconsideration take time away from other hearing-related tasks, (3) interlocutory rulings that have a material effect on the ultimate outcome of the proceeding can be appealed after the hearing decision is issued, and (4) the appellate process will not cause undue delay given the expedited nature of the proceeding.

Nonetheless, the NRC acknowledges that given the first-of-a-kind nature of ITAAC hearings (and their tight timelines), there may be a need to correct misunderstandings or errors in a presiding officer's decision. To the extent that a presiding officer's decision (here, the ASLB or a single legal judge) is based on a simple misunderstanding or a clear and material error (*e.g.*, a conflict between the scheduling order and the Commission's order imposing procedures for the hearing), the parties could attempt to more informally raise the issue with the presiding officer by requesting a conference call on the matter.[24] Such requests should be made by email to the presiding officer's law clerk with the other parties' representatives copied on it. If the presiding officer decides that no conference call is necessary, then the parties' and the presiding officer's resources will not have been expended. If a conference call is held, the resource expenditure should be minimal and any error or misunderstanding more quickly rectified than through a formal request for reconsideration.

Finally, to prevent motions for clarification from becoming *de facto* motions for reconsideration, only motions for clarification based on an ambiguity in a presiding officer order will be permitted. In addition, a motion for clarification must explain the basis for the perceived ambiguity and may offer possible interpretations of the purportedly ambiguous language.

8. Notifications Regarding Relevant New Developments in the Proceeding

Section 189a.(1)(B)(i)–(ii) of the AEA and 10 CFR 2.309(f)(1)(vii) and 10 CFR 2.340(c) require contentions to be submitted, and permit a hearing to go forward, on the predictive question of whether one or more of the acceptance criteria in the combined license *will* not be met. Additionally, a licensee might choose to re-perform an inspection, test, or analysis as part of ITAAC maintenance or to dispute a contention,[25] or events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. As a consequence, it is possible for the factual predicate of a contention to change over the course of the proceeding, thus affecting the contention or the hearing schedule. Given this and as directed by the Commission in *USEC Inc.* (American Centrifuge Plant), CLI–06–10, 63 NRC 451, 470 (2006), the parties have a continuing obligation to notify the other parties and the presiding officer of relevant new developments in the proceeding. In addition, to ensure that the parties and the Commission stay fully informed of the status of challenged ITAAC as a hearing request is being considered, any answers to the hearing request from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.

---

[23] Consistent with practice under 10 CFR 2.307, a motion for extension of time might be filed shortly after a deadline has passed (*e.g.*, an unanticipated event on the filing deadline prevented the participant from filing). *See* "Amendments to Adjudicatory Process Rules and Related Requirements" (77 FR 46562, 46571; August 3, 2012).

[24] This possibility is not available in cases where the Commission, itself, is serving as the presiding officer because such an informal process would be impractical since Commission action is subject to formal processes (some of which are required by law). In addition, the potential need for such an informal process is less likely to arise in the portions of the ITAAC hearing process over which the Commission will preside.

[25] The legislative history of the EPAct suggests that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143–44 (February 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

After answers are filed, the parties must notify the Commission and the other parties in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. Such a notification includes information related to re-performance of an ITAAC that might bear on the proposed contentions. In addition, after answers are filed, the licensee must notify the Commission and the parties of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed within one day of the ITAAC closure notification or ITAAC post-closure notification being submitted to the NRC.

9. Stays

The stay provisions of 10 CFR 2.342 and 10 CFR 2.1213 apply to this proceeding, but in the interests of expediting the proceeding, (1) the deadline in 10 CFR 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days, and (2) the deadline in 10 CFR 2.1213(c) to file an answer supporting or opposing a stay application is likewise reduced to 7 days. In addition, as explained previously, a request to stay the effectiveness of the Commission's decision on interim operation will not be entertained.

10. Interlocutory Review

The NRC has limited interlocutory review to decisions on access to SUNSI or SGI because interlocutory review of other decisions would be unnecessary and unproductive given the expedited nature of the proceeding. Because of the abbreviated ITAAC hearing schedule, appeal rights will quickly accrue, and before the initial decision, the parties' resources should be dedicated to completing the hearing. The NRC is allowing interlocutory review for decisions granting access to SUNSI or SGI because a post-hearing appeal opportunity will not cure the harm from a pre-hearing grant of access to sensitive information. The NRC is also providing a right to interlocutory review for decisions denying access to SUNSI or SGI because the NRC believes that those seeking access to SUNSI or SGI should have a reciprocal appeal opportunity and because it is important to quickly resolve disputes over access to such information given the potential effect that an erroneous denial of access might have on the schedule of the proceeding. However, the Commission does not expect appeals seeking to overturn a denial of access to SUNSI or SGI to delay any aspect of the proceeding unless the requestor can show irreparable harm.

The interlocutory appeal provision in the procedures is modeled after the relevant provisions of 10 CFR 2.311, but to expedite the proceeding and given the limited nature of the disputes subject to interlocutory appeal, such an appeal must be filed within 7 days of the order being appealed, and any briefs in opposition will be due within 7 days of the appeal. A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted in whole or in part. A presiding officer order granting a request for access to SUNSI or SGI may be appealed only on the question of whether the request should have been denied in whole or in part. However, such a question with respect to SGI may be appealed only by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

11. Licensee Hearing Requests

In accordance with 10 CFR 2.105(d)(1), a notice of proposed action must state that, within the time period provided under 10 CFR 2.309(b), the applicant may file a request for a hearing. While this provision literally refers to applicants as opposed to licensees, it makes sense and accords with the spirit of the rule to provide an equivalent opportunity to licensees seeking to operate their plants, which have legal rights associated with possessing a license that must be protected. The situation giving rise to such a hearing request would be a dispute between the licensee and the NRC staff on whether the ITAAC have been successfully completed. The hearing request must be filed within 60 days of publication of the notice of intended operation, except that the licensee may file a hearing request after this deadline if it is filed within 20 days of formal correspondence from the NRC staff communicating its position that a particular ITAAC has not been successfully completed. If a hearing request is filed by the licensee, the NRC staff may file an answer within 10 days of service of the hearing request.

With respect to the contents of a licensee request for hearing, the *prima facie* showing requirement would not apply because the licensee would be asserting that the acceptance criteria are met rather than asserting that the acceptance criteria have not been, or will not be, met. Licensees requesting a hearing would be challenging an NRC staff determination that the ITAAC has not been successfully completed; this NRC staff determination would be analogous to a *prima facie* showing that the acceptance criteria have not been met. Given this, a licensee requesting a hearing is required to specifically identify the ITAAC whose successful completion is being disputed by the NRC staff and to identify the specific issues that are being disputed. However, a hearing request by the licensee need not address the contention admissibility standards in 10 CFR 2.309(f). Also, a licensee's hearing request need not address 10 CFR 2.309(d) because the licensee's interest in the proceeding is established by the fact that its authority to operate the facility depends on its compliance with the ITAAC.

The NRC does not believe that separate hearing procedures need to be developed for a hearing requested by a licensee. Such hearing requests should be highly unusual because disputes between the NRC staff and the licensee are normally resolved through other mechanisms. Also, many of the hearing procedures described in this notice could likely be adapted, with little change, to serve the purposes of a hearing requested by a licensee.

B. Procedures for Hearings Involving Testimony

With the exception of procedures for licensee hearing requests, the procedures described previously for inclusion with the notice of intended operation will also be included in the order setting forth the procedures for hearings involving testimony, with the following modifications:

- In the procedures issued with the notice of intended operation, additional briefing on licensee-proposed mitigation measures would occur only after a decision on the hearing request. However, because of the greater need for an expedited decision on interim operation for contentions submitted after the hearing request is granted, a different process is necessary. Therefore, if the licensee's answer addresses proposed mitigation measures to assure adequate protection during interim operation, the NRC staff and the proponent of the hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline may, within 20 days of the licensee's answer, file a response that addresses only the effect these proposed mitigation measures would have on adequate protection during the period of interim operation.

- The provisions described earlier for motions for reconsideration under 10 CFR 2.323(e) also apply to petitions for reconsideration under 10 CFR 2.345.
- Additional procedures are imposed regarding notifications of relevant new developments related to admitted contentions. Specifically, if the licensee notifies the presiding officer and the parties of an ITAAC closure notification, an ITAAC post-closure notification, or the re-performance of an ITAAC related to an admitted contention, then the notice shall state the effect that the notice has on the proceeding, including the effect of the notice on the evidentiary record, and whether the notice renders moot, or otherwise resolves, the admitted contention. This notice requirement applies as long as there is a contested proceeding in existence on the relevant ITAAC (including any period in which an appeal of an initial decision may be filed or during the consideration of an appeal if an appeal is filed). Within 7 days of the licensee's notice, the other parties shall file an answer providing their views on the effect that the licensee's notice has on the proceeding, including the effect of the notice on the evidentiary record, and whether the notice renders moot, or otherwise resolves, the admitted contention. However, the petitioner is not required in this 7-day time frame to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notice's effect on the proceeding (*e.g.,* hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

Additional significant procedures that specifically relate to hearings involving witness testimony are as follows.

1. Schedule and Format for Hearings Involving Witness Testimony

As discussed earlier, the NRC is using a subpart L-type approach for evidentiary hearings that features pre-filed written testimony, an oral hearing, and questioning by the presiding officer rather than by counsel for the parties.[26] Two alternative hearing tracks have been developed, Track 1 and Track 2, with the only difference between these two tracks being whether both pre-filed initial and rebuttal testimony are permitted (Track 1) or whether only pre-filed initial testimony is permitted (Track 2). While Track 2 does not allow written rebuttal, it does allow a form of oral rebuttal in that the parties can propose questions to be asked of their own witnesses to respond to the other parties' filings.

After considering comments on which hearing track to use and as discussed in Section 5.D of the Comment Summary Report, the NRC has made the Track 1 procedures the default evidentiary hearing track. Written rebuttal should ensure that the parties have a complete opportunity to respond to new, unexpected issues raised in the other parties' initial testimony. Also, written rebuttal should clarify the evidentiary record and clarify the contested issues prior to the oral hearing, which ought to make the oral hearing shorter and more efficient. Further, written rebuttal should help the presiding officer reach its decision more expeditiously by increasing the likelihood that the topics raised in initial testimony will have been fully addressed before the hearing. Given these advantages, written rebuttal will be included in most cases. Setting Track 1 as the default hearing track will simplify the process for designating hearing procedures in each proceeding.

The Track 1 schedule should generally accommodate a timely hearing decision for contentions submitted with the initial hearing request. In cases where the Track 1 schedule might not accommodate issuance of the initial decision by scheduled fuel load (*e.g.,* where new contentions after the deadline are admitted), the NRC believes that the benefits of written rebuttal will nevertheless generally outweigh the minor potential time savings from its elimination. Also, even though Track 2 is nominally shorter than Track 1, the time saved from eliminating written rebuttal might ultimately be lost during the hearing and post-hearing phases if the presiding officer has an incomplete understanding of the parties' positions prior to the oral hearing. In any event, the Commission retains the authority to eliminate written rebuttal in individual proceedings. For example, the Commission might eliminate written rebuttal if the contested issues are narrow and simple and the parties' positions in the hearing request and answers are sufficiently established to allow a full response in the parties' initial testimony and statements of position. For this reason, the Track 2 procedures are being retained as an option in the final procedures.

To ensure the completion of the hearing by the statutorily-mandated goal, the Commission will establish a "strict deadline" for the issuance of the initial decision that can only be extended upon a showing that "unavoidable and extreme circumstances" necessitate a delay. The presiding officer has the authority to extend the strict deadline after notifying the Commission of the rationale for its decision, which the presiding officer is expected to make at the earliest practicable opportunity after determining that an extension is necessary. In addition to this strict deadline, the schedule includes two other types of target dates: Default deadlines and milestones. "Default deadlines" are requirements to which the parties must conform, but they may be modified by the presiding officer for good cause. Default deadlines are used for the completion of certain tasks soon after the decision on the hearing request that the parties must begin working toward as soon as the hearing request is granted. Target dates that have not been designated as a "strict deadline" or a "default deadline" are "milestones," which are not requirements, but the presiding officer is expected to adhere to milestones to the best of its ability in an effort to complete the hearing in a timely fashion. The presiding officer may revise the milestones in its discretion, with input from the parties, keeping in mind the strict deadline for the overall proceeding.

The Track 1 and Track 2 schedules are reproduced in Table 1.

---

[26] However, as explained later, there is an opportunity to file motions to conduct cross-examination.

TABLE 1—TRACK 1 AND TRACK 2 SCHEDULES

Event	Target date	Target date	Target date type
	Track 1 (the default)	Track 2	
Prehearing Conference	Within 7 days of the grant of the hearing request.	Within 7 days of the grant of the hearing request.	Milestone.
Scheduling Order	Within 3 days of the prehearing conference.	Within 3 days of the prehearing conference.	Milestone.
Document Disclosures; Identification of Witnesses; and NRC Staff Informs the Presiding Officer and Parties of Whether the Staff Will Participate as a Party.	15 days after the grant of the hearing request.	15 days after the grant of the hearing request.	Default Deadline.
Pre-filed Initial Testimony	30 (+/−5) days[27] after the grant of the hearing request.	30 (+/−5) days after the grant of the hearing request.	Milestone.
Pre-filed Rebuttal Testimony	14 days after initial testimony	No rebuttal	Milestone.
Proposed Questions; Motions for Cross-Examination/Cross-Examination Plans.	7 days after rebuttal testimony	7 days after initial testimony	Milestone.
Answers to Motions for Cross-Examination.	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing.	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing.	Milestone.
Oral Hearing	15 days after rebuttal testimony	15 days after initial testimony	Milestone.
Joint Transcript Corrections	7 days after the hearing	7 days after the hearing	Milestone.
Findings (if needed)	15 days after the hearing or such other time as the presiding officer directs.	15 days after the hearing or such other time as the presiding officer directs.	Milestone.
Initial Decision	30 days after the hearing	30 days after the hearing	Strict Deadline.

The Track 1 schedule takes 89 (+/−5) days (including one day for the oral hearing), and the Track 2 schedule takes 75 (+/−5) days (including one day for the oral hearing). The Commission may add or subtract up to 5 days for initial testimony depending on the number and complexity of contested issues. As stated earlier, answers to a hearing request would be due 125 days before scheduled fuel load if the notice of intended operation is published 210 days before scheduled fuel load, and the milestone for rulings on hearing requests is 30 days from the filing of answers. Thus, using the default hearing track (Track 1) for a contention admitted with a hearing request filed by the original deadline, an initial decision can ordinarily be expected 6 (+/−5) days before scheduled fuel load. The Commission retains the flexibility to modify these dates, as well as the other procedures set forth in this notice, on a case-specific basis.

Both the Track 1 and Track 2 hearing schedules are aggressive, but this is necessary to satisfy the statutorily-mandated goal for timely completion of the hearing. The NRC believes that these schedules are feasible and will allow the presiding officer and the parties a fair opportunity to develop a sound record for decision. However, all parties must schedule their resources such that they will be able to provide a high, sustained effort throughout the hearing process. The parties are obligated to ensure that their representatives and witnesses are available during this period to perform all of their hearing-related tasks on time. The competing obligations of the participants' representatives or witnesses will not be considered good cause for any delays in the schedule.

The specific provisions governing the evidentiary hearing tasks are set forth in detail in Final Template B. Except for the mandatory disclosure requirements, these provisions are drawn from 10 CFR part 2, subpart L, subject to the schedule set forth previously and the following significant modifications or additional features:

- The prehearing conference is expected to occur, and the scheduling order is expected to be issued, soon after the hearing request is granted. To meet this schedule, the NRC envisions that those who might potentially serve as the presiding officer will be designated well before the decision on the hearing request so that these persons would be familiar with the ITAAC hearing procedures, the record, and the disputed issues and would be able to immediately commence work on evidentiary hearing activities once the hearing request is granted.
- Other than a joint motion to dismiss supported by all of the parties, motions to dismiss and motions for summary disposition are not permitted. The time frame for the hearing is already limited, and the resources necessary to prepare, review, and rule on a motion to dismiss or motion for summary disposition would take time away from preparing for the hearing and likely would not outweigh the potential for error should it later be decided on appeal that a hearing was warranted.
- Written statements of position may be filed in the form of proposed findings of fact and conclusions of law. Doing so would allow the parties to draft their post-hearing findings of fact and conclusions of law by updating their pre-hearing filings. Also, if the parties choose this option, the presiding officer should consider whether it might be appropriate to dispense with the filing of written findings of fact and conclusions of law after the hearing.
- Written motions *in limine* or motions to strike[28] will not be permitted because such motions would lead to delay without compensating benefit. The parties' evidentiary submissions are expected to be narrowly focused on the discrete technical issues that would be the subject of the admitted contentions, and the presiding officer is capable of judging the relevance and persuasiveness of the arguments, testimony, and evidence without excluding them from the record. In addition, the parties' rights will be protected because they will have

---

[27] The Commission may add or subtract up to 5 days depending on the number and complexity of contested issues.

[28] Collectively, written motions *in limine* and motions to strike are written motions to exclude another party's arguments, testimony, or evidence.

an opportunity to address the relevance or admissibility of arguments, testimony, or evidence in their pre- and post-hearing filings, or at the hearing.

- Consistent with 10 CFR 2.1204(b)(3), cross-examination by the parties shall be allowed only if it is necessary to ensure the development of an adequate record for decision. Cross-examination directed at persons providing eyewitness testimony will be allowed upon request. Similarly, in the exercise of its discretion, the presiding officer need not ask all (or any) questions that the parties request the presiding officer to consider propounding to the witnesses.
- Written answers to motions for cross-examination would be due 5 days after the filing of the motion, or, alternatively, if travel arrangements for the hearing interfere with the ability of the parties and the presiding officer to file or receive documents, an answer may be delivered orally at the hearing location just prior to the start of the hearing.[29] At the prehearing conference, the presiding officer and the parties would address whether answers to motions for cross-examination will be in written form or be delivered orally.
- Proposed findings of fact and conclusions of law will be allowed unless the presiding officer dispenses with them for some or all of the hearing issues. Proposed findings of fact and conclusions may aid the presiding officer by summarizing the parties' positions on the issues at hearing and citing to the hearing record, but if proposed findings of fact and conclusions of law are unnecessary for some (or all) issues, the presiding officer may dispense with proposed findings of fact and conclusions of law on these issues to avoid delay.

2. Mandatory Disclosures/Role of the NRC Staff

Discovery should be limited to the mandatory disclosures required by 10 CFR 2.336(a), with certain modifications. The required disclosures, pre-filed testimony and evidence, and the opportunity to submit proposed questions should provide a sufficient foundation for the parties' positions and the presiding officer's ruling, as they do in other informal NRC adjudications. Any information that might be gained by conducting formal discovery under 10 CFR part 2, subpart G, likely would not justify the time and resources necessary to gain that information, particularly considering the limited time frame in which an ITAAC hearing must be conducted. Accordingly, depositions, interrogatories, and other forms of discovery provided under 10 CFR part 2, subpart G, will not be permitted. Modifications to the mandatory disclosure requirements of 10 CFR 2.336 are as follows:

- For the sake of simplicity, NRC staff disclosures will be based on the provisions of 10 CFR 2.336(a), as modified for ITAAC hearings, rather than on 10 CFR 2.336(b). The categories of documents covered by 10 CFR 2.336(a) and 10 CFR 2.336(b) are likely to be the same in the ITAAC hearing context, and it is reasonable in an ITAAC hearing to impose a witness identification requirement on the NRC staff with its initial disclosures since initial testimony is due soon after the initial disclosures.
- The witness identification requirement of 10 CFR 2.336(a) is clarified to explicitly include potential witnesses whose *knowledge* provides support for a party's claims or positions in addition to opinion witnesses.
- All parties will provide disclosures of documents relevant to the admitted contentions and the identification of fact and expert witnesses within 15 days of the granting of the hearing request. This short deadline is necessary to support the expedited ITAAC hearing schedule. In addition, it is expected that the parties will be able to produce document disclosures and identify witnesses within 15 days of the granting of the hearing request because of the focused nature of an ITAAC hearing and because the parties will have already compiled much of the information subject to disclosure in order to address the *prima facie* showing requirement for ITAAC hearing requests.
- Parties may agree to exclude certain classes of documents (such as drafts) from the mandatory disclosures. The NRC has no objection to such exclusions if agreed to by the parties, and such exclusions should be discussed at the prehearing conference.
- As a default matter, a party is not required to include a document in a privilege log if (1) the document satisfies the withholding criteria of 10 CFR 2.390(a), and (2) the document is not being withheld on the basis that it is SGI, security-related SUNSI, or proprietary information. SGI, security-related SUNSI, and proprietary information might have some bearing on contested issues, and access might be appropriate in some circumstances pursuant to a protective order. However, other types of privileged information are much less likely to have a bearing on contested issues, particularly given the narrow technical nature of ITAAC. Nonetheless, the presiding officer may change the scope of the privilege log requirement for a case-specific reason, and the parties may jointly agree to change the scope of the privilege log requirement.
- Privilege logs will be viewed as sufficient if they specifically identify each document being withheld (including the date, title, and a brief description of the document) and the basis for withholding (*e.g.,* "contains SGI").
- Disclosure updates will be due every 14 days (instead of monthly) to support the expedited ITAAC hearing schedule.
- The subpart L provisions for NRC staff participation as a party are retained, but the procedures in this notice also provide that the Commission may direct the NRC staff to participate as a party in the Commission order imposing hearing procedures.

In addition to the disclosure provisions of 10 CFR 2.336(a), the provisions of the SUNSI–SGI Access Order will apply to all participants (including parties)[30] subject to the following modifications/clarifications:

- For a party seeking access to SUNSI or SGI relevant to the *admitted* contentions, the 10 CFR 2.336(a) disclosures process will be used in lieu of the SUNSI–SGI Access Order. As part of the disclosures process, a party seeking SUNSI or SGI related to an admitted contention would first seek access from the party possessing the SUNSI or SGI. Any disputes among the parties over access to SUNSI would be resolved by the presiding officer, and any disputes over access to SGI would be resolved in accordance with 10 CFR 2.336(f), except that the time periods under 10 CFR 2.336(f) governing challenges to NRC staff determinations on access to SGI have been reduced as explained earlier in this notice.
- In cases where there is a dispute over access to SUNSI or SGI, the presiding officer ruling on the dispute will also be the presiding officer

---

[29] Because cross-examination plans are filed non-publicly, answers to cross-examination motions would only address the public motion, which would likely include less detail. This justifies the shorter deadline for answers and the reasonableness of having answers be delivered orally.

[30] In other proceedings, the provisions of the SUNSI–SGI Access Order apply to petitioners not yet admitted as parties, as explained in *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI–10–24, 72 NRC 451, 461–62 (2010). However, an ITAAC hearing differs from most NRC proceedings because there will be no hearing file. The hearing file provides information that may be used to support new contentions. Because the disclosures process in an ITAAC hearing does not allow parties to access SUNSI or SGI for the purpose of formulating contentions unrelated to admitted contentions, it makes sense to apply the provisions of the SUNSI–SGI Access Order to parties.

responsible for the issuance of protective orders and other related matters. In cases where there is no access dispute but a presiding officer is needed for protective orders or other related matters, (1) the presiding officer for the admitted contention will be the presiding officer for such matters when the SUNSI or SGI is being provided as part of mandatory disclosures, and (2) the Chief Administrative Judge will choose a presiding officer for such matters when the SUNSI or SGI is being provided under the SUNSI–SGI Access Order.

- The timeliness standard for requests for access is the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.
- Any contentions based on SUNSI or SGI must be filed within 20 days of access to the SUNSI or SGI.

As for the 10 CFR 2.1203 hearing file that the NRC staff is obligated to produce in subpart L proceedings, the NRC is not applying this requirement to ITAAC hearings because the more narrowly defined NRC disclosure provisions discussed previously are sufficient to disclose all relevant documents. The scope of an ITAAC hearing is narrowly focused on whether the acceptance criteria in the pre-approved ITAAC are met, unlike other NRC adjudications that involve the entire combined license application. And unlike other NRC adjudicatory proceedings that may involve numerous requests for additional information, responses to requests for additional information, and revisions to the application, an ITAAC hearing will focus on licensee ITAAC notifications and related NRC staff review documents that will be referenced in a centralized location on the NRC Web site. Consequently, it is unlikely in an ITAAC hearing that a member of the public would obtain useful documents through the hearing file required by 10 CFR 2.1203 that it would not obtain through other avenues.

3. Certified Questions/Referred Rulings

The NRC recognizes that there may be unusual cases that merit a certified question or referred ruling from the presiding officer, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 CFR 2.323(f) and 10 CFR 2.341(f)(1) apply to ITAAC hearings. However, the proceeding would not be stayed by the presiding officer's referred ruling or certified question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the proceeding during the pendency of the Commission's review.

C. Procedures for Hearings Not Involving Testimony (Legal Contentions)

Admitted contentions that solely involve legal issues will be resolved based on written legal briefs. The briefing schedule will be determined by the Commission on a case-by-case basis. The procedures retain the Commission's discretion to serve as the presiding officer or to delegate that function. However, the Commission has concluded, as a general matter that a single legal judge (assisted as appropriate by technical advisors) should be the presiding officer for hearings on legal contentions when the Commission chooses not to be the presiding officer. When only legal issues are involved, the considerations in favor of employing a panel are less weighty given that most ASLBs in other proceedings include only one legal judge, with the other two judges being technical experts on factual matters. Also, a single judge may be able to reach and issue a decision more quickly than a panel of judges.

The Commission will impose a strict deadline for a decision on the briefs by the presiding officer. If a single legal judge is the presiding officer, then the presiding officer will have the discretion to hold a prehearing conference to discuss the briefing schedule and to discuss whether oral argument is needed, but a decision to hold oral argument will not change the strict deadline for the presiding officer's decision. The additional hearing procedures for legal contentions will be taken from Template B, with the exception of those that involve testimony (or associated filings) and those that involve discovery. Also, if the Commission designates itself as the presiding officer for resolving the legal contention, then the procedures taken from Template B will be revised to reflect this determination.

D. Procedures for Resolving Claims of Incompleteness

If the Commission determines that the petitioner has submitted a valid claim of incompleteness, then it will issue an order that will require the licensee to provide the additional information within 10 days (or such other time as specified by the Commission) and provide a process for the petitioner to file a contention based on the additional information. This contention and any answers to it will be subject to the requirements for motions for leave to file new or amended contentions after the original deadline that are described earlier. If the petitioner files an admissible contention thereafter, and all other hearing request requirements have been met, then the hearing request will be granted and an order imposing procedures for resolving the admitted contention will be issued. If the petitioner submits another claim of incompleteness notwithstanding the additional information provided by the licensee, it shall file its request with the Commission. Any additional claims of incompleteness will be subject to the timeliness requirements for motions for leave to file claims of incompleteness after the original deadline that are described previously. Finally, the Commission order imposing procedures for resolving claims of incompleteness will include additional procedures, primarily from the Additional Procedures Order in Template A, with changes to reflect the procedural posture for a valid claim of incompleteness.

VII. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through the following methods as indicated.

Document	ADAMS Accession No.
Public comment from Ellen C. Ginsberg on behalf of the Nuclear Energy Institute (May 27, 2015)	ML15149A102
Final Template A "Notice of Intended Operation and Associated Orders"	ML16167A469
Final Template B "Procedures for Hearings Involving Testimony"	ML16167A471
Final Template C "Procedures for Hearings Not Involving Testimony"	ML16167A475
Final Template D "Procedures for Resolving Claims of Incompleteness"	ML16167A479

Document	ADAMS Accession No.
Comment Summary Report—Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met (June 2016).	ML16167A464
Public comment from Ellen C. Ginsberg on behalf of the Nuclear Energy Institute (July 2, 2014)	ML14190A012
Public comment from April R. Rice on behalf of South Carolina Electric & Gas Company (July 2, 2014)	ML14190A013
Public comment from Brian H. Whitley on behalf of Southern Nuclear Operating Company, Inc. (July 2, 2014)	ML14190A011
Public comment from Thomas C. Geer on behalf of Westinghouse Electric Company LLC (July 1, 2014)	ML14190A010
Public comment from William Maher on behalf of Florida Power and Light Company (July 2, 2014)	ML14190A009
Public comment from Mr. Barton Z. Cowan (July 2, 2014)	ML14195A275
Summary of May 21, 2014 public meeting (June 2, 2014)	ML14153A433
Transcript of May 21, 2014 public meeting	ML14147A200
Summary of September 22, 2014 public meeting (October 2, 2014)	ML14276A154
Transcript of September 22, 2014 public meeting	ML14274A235
Public comment from Mr. Marvin Lewis (September 23, 2014)	ML14272A454
Public comment from Ellen C. Ginsburg on behalf of the Nuclear Energy Institute (October 15, 2014)	ML14289A494
Draft Template A "Notice of Intended Operation and Associated Orders" (April 10, 2014)	ML14097A460
Draft Template B "Procedures for Hearings Involving Testimony" (April 10, 2014)	ML14097A468
Draft Template C "Procedures for Hearings Not Involving Testimony" (April 10, 2014)	ML14097A471
Draft Template D "Procedures for Resolving Claims of Incompleteness" (April 10, 2014)	ML14097A476
Vogtle Unit 3 Combined License, Appendix C	ML112991102
SECY–13–0033, "Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103" (April 4, 2013)	ML12289A928
SRM on SECY–13–0033 (July 19, 2013)	ML13200A115
Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information (February 29, 2008).	ML080380626

The NRC has posted documents related to this notice, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0077. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0077); (2) click the "Email Alert" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

VIII. Plain Language Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in developing these general procedures, consistent with the Federal Plain Writing Act guidelines.

Dated at Rockville, Maryland, this 27th day of June, 2016.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol,

Acting, Secretary of the Commission.

[FR Doc. 2016–15693 Filed 6–30–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–157 and CP2016–228; MC2016–158 and CP2016–229]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 5, 2016 (Comment due date applies to all Docket Nos. listed above)

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service has filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The requests(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2016–157 and CP2016–228; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 228 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 24, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Natalie R. Ward; *Comments Due:* July 5, 2016.

2. *Docket No(s).:* MC2016–158 and CP2016–229; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 20 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 24, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Natalie R. Ward; *Comments Due:* July 5, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–15587 Filed 6–30–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Clarification of the Move Update Standard

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: This notice provides information to clarify Move Update standards and to assist mailers in their compliance with those standards.

DATES: *Effective:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Direct questions or comments to Charles B. Hunt by email at *charles.b.hunt@usps.gov* or phone (901) 681–4651.

SUPPLEMENTARY INFORMATION: The U.S. Postal Service (USPS®) receives recurring inquiries from the mailing industry relative to the standards for Move Update services. This notice is intended to clarify Move Update requirements in relation to discount mail preparation prices for all commercial mailers, including those authorized as 99 Percent Accurate and Legal Restraint customers.

Later in this document, inquiries from mailers and USPS responses are outlined to further clarify this notice.

Overview

Nearly 40 million people (or about 12 percent of the U.S. population) change their addresses each year. To minimize undeliverable and discarded mail, it is essential that mailing address lists are kept up-to-date. USPS Move Update services are designed for this purpose.

Move Update allows mailers to keep their mailing addresses current and reach their customers after they have moved, which ultimately leads to customer retention. Move Update is also critically important for Postal Service operational purposes, because massive amounts of undeliverable and discarded mail put a strain on the Postal Service, which translates to needless expenses and inefficiencies. In sum, Move Update is designed to reduce waste and associated expenses by improving the quality of mail address lists, which benefits both mailers and the Postal Service.

The Move Update standard applies to commercial mailings of presorted and automation First-Class Mail®, presorted First-Class Package Service®, Parcel Select Lightweight, and all Standard Mail® pieces. Mailers who present mixed mailings that pertain to at least one of the above mentioned categories are subject to the Move Update standard.

The Move Update standard requires mailers periodically to match their address records with the customer-filed, change-of-address (COA) orders maintained by the Postal Service. Mailers are required to reconcile their mailing address lists within 95 days of the postage statement finalization date or a surcharge will be assessed.

Move Update Methods

The Postal Service advises mailers to verify their mailing address lists at least every three months using one of the following USPS-approved Move Update methods:

- *National Change-of-Address Link* (NCOA$^{\text{Link}}$ ®).
- *National Change-of-Address Link Mail Processing Equipment* (NCOA$^{\text{Link}}$ MPE).
- *Ancillary Service Endorsement* (ASE).
- *Address Change Service* (ACS™).

Alternative Move Update Methods

Alternative Move Update methods include the *99 Percent Accurate Method* (also known as Mailer Move Update Process Certification) and *Legal Restraint Method.* These two methods apply to First-Class Mail and First-Class Package Service only. A mailer's use of either method requires authorization from the National Customer Support Center (NCSC).

99 Percent Accurate Method

Mailers who can demonstrate that their internal list management maintains address quality at 99 percent or greater accuracy for COA may be authorized to comply with the Move Update standard through the 99 Percent Accurate Method.

The 99 Percent Accurate test is a computer-based process that performs Postal Service ZIP + 4® coding and COA processing utilizing the customer's file as input. The 99 Percent Accurate test is accomplished by submitting the mailer's address file(s) to the Postal Service for processing.

The purpose of the 99 Percent Accurate test is to determine whether 1 percent or less of the addresses on the mailer's list has a COA on file, and to identify addresses that do not have ZIP + 4 Codes.

Mailers who wish to use the 99 Percent Accurate Method to comply with the Move Update standard must submit an application for approval and adhere to the validation process outlined in the *Guide to Move Update.* The verification process takes approximately 7 to 10 business days.

Legal Restraint Method

When a legal restriction prevents mailers from updating their customer's address without direct contact from the customer, they can be authorized to use the Legal Restraint method to comply with the Move Update standard. To obtain authorization, the mailer must show that a particular law prohibits the mailer from using a primary method to meet the Move Update standard.

To use the Legal Restraint method, mailers must follow the following four-step process:

- First, receive Postal Service COA information using one of the pre-approved methods within 95 days prior to the mailing.
- Second, for each address identified as having a COA, adhere as follows: Contact the addressee within 30 days after receiving the COA information; request confirmation of the move in a format that will satisfy your legal requirements; and choose the format with which to receive confirmation from the addressee—written, telephoned, or electronic.
- Third, incorporate all COA confirmations received in response to the second step into your system within 30 days of receiving confirmation from the customer. If any recipients indicate that the COA information is not to be used, the mailer should instruct them to

contact their local post master to correct the COA information that has been filed with the Postal Service. The mailer may use the current address for 95 days from the date of address confirmation with the recipient.

- Finally, keep documentation of the process described above for one year, including dates on which each step was performed, number of COA orders identified, number of confirmation requests, and evidence that demonstrates that updates have been incorporated into your system. Provide documentation to the Postal Service upon request. Be sure to keep records of all situations where the recipient indicated not to use the new address as not using the new address may affect your Move Update verification score during mail acceptance. Move Update processing must be done 95 days prior to mailing. Should there be any need to change the procedures outlined in your description, you are required to inform NCSC prior to making the change to retain authorization for the Legal Restraint method.

Mailers who are authorized for the Legal Restraint method must use an exclusive Mailer Identification (MID) or multiple exclusive MIDs for Legal Restraint mailings. This allows the Postal Service to properly identify these types of mailings and, where appropriate, exclude the mailings from the normal Seamless Acceptance Move Update compliance review. The mailer cannot use these MIDs for other types of mailings that do not fall under the Legal Restraint authorization. The USPS has already worked with the Legal Restraint mailers to identify these MIDs.

All current Legal Restraint authorized mailers will be allowed a one-year transition period to begin use of the exclusive MIDs. The one-year transition period is calculated starting from the date of their next annual Legal Restraint renewal, which is authorized by the Postal Service.

Existing Legal Restraint mailers who are able to implement the exclusive MIDs are encouraged to do so prior to the end of the one-year transition period. Any mailer seeking a new authorization for the Legal Restraint method will be required to use the exclusive MIDs upon approval.

Authorization for Legal Restraint

To acquire authorization to use the Legal Restraint method, the mailer must adhere to the following requirements:

- Request authorization in writing.
- Identify by citation the specific legal restriction.
- Include copies of the statutes or regulations that prohibit the immediate use of COA information from a primary method of Move Update compliance.
- Provide a flowchart and/or process description of the Move Update method currently being used and the related confirmation process.
- This requirement applies to federal, state, and local government mailers.
- Submit the request to the following USPS location: NCSC, 225 N Humphreys Blvd., Suite 501, Memphis, TN 38188–1001

Mailer Inquiries

Listed below are responses to some of the more common commercial mailer inquiries derived from ongoing Move Update dialogue.

Mailer Inquiry

Are mailpieces eligible for discounted mail preparation prices when the addresses are classified by the Postal Service as follows?

- Moved, Left No Forwarding Address (MLNA)
- P.O. Box Closed, No Forwarding Order (BCNO)
- Foreign (new address is foreign)

USPS Response

Mailpieces bearing addresses that are classified by the Postal Service as MLNA, BCNO, or Foreign are exempt from the Move Update requirement. Therefore, these pieces are eligible for discounted mail preparation prices.

Mailer Inquiry

Are pieces where NCOA$^{\text{Link}}$ returned a FN (footnote) 5, 14, or 19 (indicating a known move, but not providing the new address) eligible for discounted mail preparation rates?

USPS Response

When a mailer uses NCOA$^{\text{Link}}$ as the Move Update method, there are situations when an input address may receive a Return Code of 5, 14, or 19, which indicates a COA was found. However, a new address could not be provided due to one of the following reasons for new address:

- Ambiguous information
- Unconfirmed primary number
- No ZIP+4 Code
- Only temporary COA filed
- Run-time issues

In such cases, using the original input address for the mailing would satisfy the Move Update requirement towards qualification for discounted mail preparation prices.

Mailer Inquiry

Are mailpieces for which ACS returned a new address that fails Delivery Point Validation (DPV) and the mailer uses the original address, eligible for discounted mail preparation prices?

USPS Response

There are situations where the ACS method will provide a notification of a new address for the intended recipient that is not DPV. To satisfy the Move Update standard, all new addresses returned by the ACS method must be used to update the addresses used on future mailings. Electing to utilize the original address for the mailing, means the Move Update standard is not satisfied and the piece is ineligible for discounted mail preparation prices.

Mailer Inquiry

Are mailpieces eligible for discounted mail preparation prices when addresses include COA information that is more than 18 months old?

USPS Response

Each address used on mailpieces must be updated via an approved Move Update method within 95 days prior to the mailing date, as follows:

- If the COA is older than 95 days, it is expected that the new address has been updated to the mailer's system for use on future mailings.
- If the Move Update method that was used did not provide a match and new address because the COA data was not available, the mailer is considered to have satisfied the Move Update standard assuming that the mailer had properly performed the Move Update processing in a timeframe and configuration compliant with USPS-approved methods.
- If the mailer obtained a new address before the COA was more than 18 months old and failed to update the address, the old address would not be compliant with the Move Update standard just because the COA had become more than 18 months old.

We will update the online version of the *Guide to Move Update* on RIBBS at *https://ribbs.usps.gov/index.cfm?page=moveupdate* to reflect all changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–15648 Filed 6–30–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Reassignment of Post Office Box Section 98025 to Competitive Fee Group, and of Sections 87325 and 87326 to Market Dominant Fee Groups

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that Post Office® Box service for ZIP Code® 98025 is reassigned from its market dominant fee group to a competitive fee group, and Post Office Box services for ZIP Code 87325 and ZIP Code 87326 are reassigned from their competitive fee groups to market dominant fee groups.

DATES: *Effective date:* August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Direct questions or comments to: Joyce Fleming (*joycelyn.b.robinsonfleming@usps.gov*), 202–268–7540; or David Rubin (*david.h.rubin@usps.gov*), 202–268–2986.

SUPPLEMENTARY INFORMATION: Locations providing Post Office Box service are assigned to fee groups and classified as competitive or market dominant based upon the Post Office location and other criteria.

In May 2011, a Request of the United States Postal Service was filed with the Postal Regulatory Commission (PRC) to transfer approximately 6,800 P.O. Box locations from market dominant to competitive fee groups. At that time, the Postal Service advised the PRC that a **Federal Register** notice would be filed when any future P.O. Box locations are transferred.

While the Post Office serving ZIP Code 98025 was inadvertently excluded from previous PRC filings, the customers at that location have had a qualified competitive choice since the time of the 2011 filing. The Box Section 98025 facility, in Hobart, Washington, serves approximately 424 P.O. Box customers, and the location meets the criteria to be classified as and assigned to a competitive fee group. Therefore, the Postal Service has reassigned Hobart, Washington, Box Section ZIP Code 98025 from Market Dominant Fee Group 4 to Competitive Fee Group 34.

Conversely, the Post Offices serving ZIP Codes 87325 and 87326 were inadvertently included in a previous PRC filing, but did not have a qualified competitor at the time of the 2011 filing. The Box Section 87325 in Tohatchi, New Mexico, and the Box Section 87326 in Vanderwagen, New Mexico, do not meet the criteria to be classified as and assigned to a competitive fee group. Therefore, the Postal Service has reassigned Tohatchi, New Mexico, Box Section ZIP Code 87325 from Competitive Fee Group 35 to Market Dominant Fee Group 5; and has reassigned Vanderwagen, New Mexico, Box Section ZIP Code 87326 from Competitive Fee Group 40 to Market Dominant Fee Group 3.

Documents pertinent to this action are available at *www.prc.gov,* Docket No. MC2011–25.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–15640 Filed 6–30–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78164; File No. SR–BatsBZX–2016–27]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.22(j) Identifying Certain Transactions as the Bats One Opening Price or the Bats One Closing Price

June 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the content of the Bats One Feed under Rule 11.22(j) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price."

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the content of the Bats One Feed under Rule 11.22(j) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price." The last sale information described below that the Exchange proposes to identify as the Bats One Opening or Closing Price is currently included in the Bats One Feed. The Exchange notes that it is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BZX and its affiliated exchanges[3] and for which the Bats Exchanges reports [sic] quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.[4]

The last sale information disseminated as part of the Bats One Feed includes the price, size, time of execution, and individual Bats Exchange on which the trade was executed. The last sale information also includes the cumulative number of shares executed on all Bats Exchanges for that trading day.[5]

The Exchange now proposes to identify certain last sale transactions as the Bats One Opening Price or the Bats One Closing Price. For BZX listed securities,[6] the Bats One Opening Price would be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) [7] and the Bats One Closing Price would be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3).[8] For non-BZX listed securities, the Bats One Opening Price would be the first last sale eligible trade [9] that occurred on a Bats Exchange after 9:30 a.m. Eastern Time. That first trade would be identified as the Bats One Opening Price when disseminated via the Bats One Feed. The Bats One Closing Price for non-BZX listed securities would be the final last sale eligible trade to occur on a Bats Exchange prior to 4:00 p.m. Eastern Time. The Bats One Closing Price would be disseminated via the Bats One Feed after 4:00 p.m. Eastern Time. The Exchange would not disseminate a Bats One Opening or Closing Price for a particular trading day when a trade satisfying the above criteria does not occur.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] BZX's affiliated exchanges are the Bats BYX Exchange, Inc. ("BYX"), Bats EDGA Exchange, Inc. ("EDGA"), and Bats EDGX Exchange, Inc. ("EDGX", together with EDGA, BZX, and BYX, the "Bats Exchanges").

[4] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[5] The Bats One Feed also contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels for all securities that are traded on the Bats Exchanges in addition to the Bats One Summary Feed ("Bats One Premium Feed"). For each price level on one of the Bats Exchanges, the Bats One Premium Feed includes a two-sided quote and the number of shares available to buy and sell at that particular price level.

In addition, the Bats One Opening and Closing Price for BZX listed securities are included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. Also, the Bats One Opening and Closing Prices for non-BZX listed securities is derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [12] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the market data provider industry.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying certain transactions as the Bats One Opening or Closing Price to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information.

Lastly, the proposal would not permit unfair discrimination because the information will be available to all investors and market data vendors on an equivalent basis. In addition, any investor that wishes to receive such information via a different source will be able to do so. As noted above, the Exchange is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. Specifically, that the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities are currently provided and disseminated via the consolidated tape [14] and included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. In addition, investors can also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as prices of the first and final last sale eligible transaction to occur during Regular Trading Hours [15] are posted to the consolidated tape. Also, the Bats One Opening and Closing Prices for non-BZX listed securities are derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposal will impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act. A vendor seeking to offer a similar product by identifying certain transaction as an opening or closing price would be able to do so on the same terms as the Exchange. As discussed in in [sic] the Bats One Approval Order,[16] any entity may separately purchase the individual underlying products, and if they so choose, perform an aggregation and consolidation function similar to that which the Exchange performs in creating the Bats One Feed. Any entity may offer a data feed with the same information included in the Bats One Feed to sell and distribute it to its clients with no greater cost than the Exchange. Likewise, a competing vendor could independently identify certain transaction as an opening or closing price and include such information as part of their product to be disseminated to their customers. As discussed above, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities is currently provided to and disseminated via the consolidated tape.[17] A competing market data vendor could also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as such prices are the first and final last sale eligible transaction to occur during Regular Trading Hours.

---

[6] A BZX listed security is a security listed on the BZX pursuant to Chapter 14 of BZX's Rules.

[7] The term "BZX Official Opening Price" is the price disseminated to the consolidated tape as the market center opening trade. *See* Exchange Rule 11.23(a)(5). In the event that there is no opening auction for a BZX listed security, the BZX Official Opening Price will be the price of the final last sale eligible trade, which will be the previous BZX Official Closing Price. *See* BZX Rule 11.23(b)(2)(B).

[8] The term "BZX Official Closing Price" is the price disseminated to the consolidated tape as the market center closing trade. *See* Exchange Rule 11.23(a)(3). In the event that there is no closing auction for a BZX listed security, the BZX Official Closing Price will be the price of the final last sale eligible trade. *See* BZX Rule 11.23(c)(2)(B).

[9] A last sale eligible trade must be of at least one round lot. A round lot consists of one hundred (100) shares. *See* Exchange Rule 11.10.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

[14] *See* BZX Rule 11.23(a)(3) and (5).

[15] Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Exchange Rule 1.5(w).

[16] *See* Bats One Approval Order, *supra* note 4.

[17] *See* BZX Rule 11.23(a)(3) and (5).

Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–27 and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15582 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78181; File No. SR–NYSEArca–2016–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add a New Discretionary Pegged Order

June 28, 2016.

I. Introduction

On March 11, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 7.31P(h) to add a new Discretionary Pegged Order. The proposed rule change was published for comment in the **Federal Register** on March 30, 2016.[3] The Commission received two comment letters on the proposed rule change[4] and a response letter from the Exchange.[5] On May 12, 2016, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] On June 23, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[8] The Commission is publishing

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77441 (March 24, 2016), 81 FR 17749 ("Notice").

[4] *See* Letter from Sophia Lee, General Counsel, IEX Group, Inc. ("IEX"), to Brent J. Fields, Secretary, Commission, dated April 15, 2016 ("IEX Letter"); Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC ("Citadel"), to Brent J. Fields, Secretary, Commission, dated April 20, 2016 ("Citadel Letter").

[5] *See* Letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated April 27, 2016 ("Response Letter").

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 77820, 81 FR 31272 (May 18, 2016). The Commission designated June 28, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] In Amendment No. 1, the Exchange: (1) Added subsection (E) to proposed Rule 7.31P(h)(3), which would provide that if the PBBO (as defined below) is locked or crossed, both an arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price (as defined below) is adjusted and the order

Continued

this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equites Rule 7.31P(h) to add a new Discretionary Pegged Order for its Pillar trading platform. According to the Exchange, the proposed Discretionary Pegged Order is based on the Discretionary Peg Order ("D-Peg Order") proposed by IEX in its Form 1 application seeking registration as a national securities exchange.[9]

Proposed Rule 7.31P(h)(3) would provide that a Discretionary Pegged Order would be a Pegged Order[10] to buy (sell) that upon entry to the NYSE Arca Marketplace[11] would be assigned a working price[12] equal to the lower (higher) of the midpoint of the PBBO[13] ("Midpoint Price") or the limit price of the order. Any untraded shares of such order would be assigned a working price equal to the lower (higher) of the PBB (PBO) or the order's limit price and would automatically be adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order's limit price. In order to trade with contra-side orders on the NYSE Arca Book, a Discretionary Pegged Order to buy (sell) would exercise the least amount of price discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the Discretionary Pegged Order's limit price), except during periods of quote instability, as defined in proposed Rule 7.31P(h)(3)(D).

Proposed Rule 7.31P(h)(3)(A) would provide that Discretionary Pegged Orders would not be displayed, must be designated Day, and would be eligible to be designated for the Core Trading Session only. Discretionary Pegged Orders that include a designation for the Early Trading Session or Late Trading Session would be rejected.

Proposed Rule 7.31P(h)(3)(B) would provide that when exercising discretion, Discretionary Pegged Orders would maintain their time priority at their working price as Priority 3—Non-Display Orders and would be prioritized behind Priority 3—Non-Display Orders with a working price equal to the discretionary price of a Discretionary Pegged Order at the time of execution. If multiple Discretionary Pegged Orders are exercising price discretion during the same book processing action, they would maintain their relative time priority at the discretionary price.

Proposed Rule 7.31P(h)(3)(C) would provide that a Discretionary Pegged Order would be eligible to exercise price discretion to its discretionary price, except during periods of quote instability. If the Corporation[14] determines the PBB for a particular security to be an unstable quote, it would restrict buy Discretionary Pegged Orders in that security from exercising price discretion to trade against interest above the PBB. If the Corporation determines the PBO for a particular security to be an unstable quote, it would restrict sell Discretionary Pegged Orders in that security from exercising price discretion to trade against interest below the PBO.

Proposed Rule 7.31P(h)(3)(D) would set forth how the Exchange would determine the quote instability factor (*i.e.*, the probability of an imminent change of the current PBB to a lower price or the current PBO to a higher price). When the quoting activity meets predefined criteria and the quote instability factor is greater than a defined threshold ("quote instability threshold"), the Corporation would treat the quote as not stable ("quote instability" or "crumbling quote"). When the Corporation determines either the PBB or the PBO is unstable, the determination would remain in effect at that price level for ten milliseconds. The Corporation would only treat one side of the PBBO as unstable in a particular security at any given time.

The Corporation would determine that there is quote instability or a crumbling quote when the following occur: The PBB and PBO are the same as the PBB and PBO one millisecond ago; and the PBBO spread is less than or equal to the thirty-day median PBBO spread during the Core Trading Session; and there are more protected quotations on the far side; and the quote instability factor is greater than the defined quote instability threshold.

The quote stability calculation used to determine the current quote instability factor would be defined by the following formula:

1/(1 + e ^ − (C0 + C1 * N + C2 * F + C3 * N − 1 + C4 * F − 1)).

The Exchange proposes to use the following quote stability coefficients: C0 = −2.39515; C1 = −0.76504; C2 = 0.07599; C3 = 0.38374; and C4 = 0.14466. The Exchange proposes to use the following quote stability variables: N = the number of protected quotations on the near side of the market; F = the number of protected quotations on the far side of the market; N − 1 = the number of protected quotations on the near side of the market one millisecond ago; and F − 1 = the number of protected quotations on the far side of the market one millisecond ago. The Exchange proposes to use a quote instability threshold of 0.32.

Pursuant to proposed Rule 7.31P(h)(3)(D)(i)(D)(3), the Exchange reserves the right to modify the quote stability coefficients or quote instability

---

becomes eligible to trade; (2) provided additional responses to the comment letters; and (3) provided more information regarding the implementation date for the proposed rule change. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2016-44/nysearca201644-4.pdf.*

[9] *See* Notice, *supra* note 3, at 17749. On June 17, 2016, the Commission granted IEX's application for registration as a national securities exchange. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) ("IEX Order"). In its proposal, the Exchange identifies the substantive differences between the proposed Discretionary Pegged Order and IEX's D-Peg Order. First, the proposed Discretionary Pegged Order must have a limit price, whereas IEX's D-Peg Order is not required to have a limit price. *See* Notice, *supra* note 3, at 17749. Second, the proposed Discretionary Pegged Order must be Day time-in-force, whereas IEX's D-Peg order is also permitted to have certain other times-in-force. *See id.* Third, if the PBBO is locked or crossed, both an arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade, whereas IEX's D-Peg Order can be priced and traded if the market is locked or crossed. *See* Amendment No. 1 at 3–4. In the proposal, the Exchange also states that, unlike IEX's D-Peg Order, the proposed Discretionary Pegged Order would be based on the PBBO rather than the NBBO. *See* Notice, *supra* note 3, at 17749. According to the Exchange, the PBBO is the reference price that it uses for its Pegged Orders under Rule 7.31P(h). The Commission notes that, in an amendment to IEX's exchange application, IEX clarified that its D-Peg Order is based on the Protected NBBO. *See* Investors' Exchange LLC—Form 1 Application and Exhibits, Addendum B–1 Comparison to Amendment No. 1, available at *https://www.sec.gov/rules/other/2016/iex/iex-form-1-addendum-b-1-amendments-redline.pdf.*

[10] The term "Pegged Order" is defined in Exchange Rule 7.31P(h) as a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order.

[11] The term "NYSE Arca Marketplace" is defined in Exchange Rule 1.1(e) as the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

[12] The term "working price" is defined in Exchange Rule 7.36P(a)(3) as the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order. The term "limit price" is defined in Exchange Rule 7.36P(a)(2) as the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.

[13] The term "PBBO" is defined in Exchange Rule 1.1(dd) as the highest Protected Bid and the lowest Protected Offer.

[14] The term "Corporation" is defined in Exchange Rule 1.1(k) to mean NYSE Arca Equities, Inc., as described in NYSE Arca Equities, Inc.'s Certificate of Incorporation and Bylaws.

threshold at any time, subject to the filing of a proposed rule change with the Commission.

Proposed Rule 7.31P(h)(3)(E) would provide that if the PBBO is locked or crossed, both an arriving and a resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade.

The Exchange anticipates that it will announce the implementation date of the proposed rule change by the fourth quarter of 2016.[15]

III. Summary of Comments and Response to Comments

The Commission received two comment letters opposing the proposed rule change and a response letter and an amendment from the Exchange.[16]

One commenter points out that, as noted by the Exchange, the proposed Discretionary Pegged Order is a copy of the D-Peg Order that the commenter created, which has been offered since November 2014 by the IEX Alternative Trading System.[17] This commenter states its belief that the D-Peg Order is a useful order type that can protect investors, if implemented properly.[18] However, this commenter questions the effectiveness of the proposed Discretionary Pegged Order, and states that it should not be approved unless the Exchange amends the proposal and provides additional justifications to show that the order type would work as purported.[19] Specifically, this commenter states that the Exchange would not be in a position to deliver the benefits as claimed if it continues to offer co-location and microwave services to fast market participants because the Exchange would not be able to effectively update the order during a crumbling quote faster than the market participant trying to pick off the order.[20] This commenter also questions whether the Exchange understands the use of the proposed order type and expresses concern that the implementation of order types that are not well thought-through can increase systemic risk and may have adverse impacts on investor protection.[21] According to the commenter, the D-Peg formula was calculated based on the location of its systems in Weehawken, NJ, and its unique latency profile, and it makes little sense to apply the same formula to orders on the Exchange located in Mahwah, NJ.[22] Finally, this commenter argues that the Exchange should adopt a different name for the proposed order type to avoid confusion and misrepresentation regarding the nature of the order type.[23]

Another commenter also opposes the proposed rule change. According to this commenter, Commission approval of exchanges' use of predictive order types such as the proposed Discretionary Pegged Order would result in rapidly increasing order type complexity, which would reduce market resilience and make markets more opaque for all investors.[24] The commenter states its belief that the utility of these order types is marginal and does not outweigh the additional complexity that these order types would impose on the market.[25] This commenter also expresses concerns regarding how the Commission could or would effectively review and police additional predictive order types as they emerge and evolve, and whether the Commission would propose guidance or limitations on how predictive order types may operate.[26] Finally, this commenter states that predictive order types encroach on the traditional role of broker-dealers by using inherent competitive advantages that exchanges have over broker-dealers.[27]

In response to comments, the Exchange indicates that the proposed Discretionary Pegged Order is a competitive response to IEX's D-Peg Order.[28] The Exchange states that the proposed calculation to determine whether a quote is unstable is a straightforward determination that does not require inbound order flow to be intentionally delayed to be effective.[29] According to the Exchange, while an intentionally-delayed market may prevent arriving interest from interacting with pegged orders immediately, it does not believe that processing market data updates and inbound orders out of phase (as with IEX) or simultaneously (as proposed by the Exchange) would materially alter the effectiveness of the proposed functionality.[30] The Exchange also states its belief that the benefits of the proposed functionality would be the same regardless of the relative speed.[31] Moreover, according to the Exchange, the proposed Discretionary Pegged Order would be an optional order type, and if market participants do not believe that the quote instability formula appropriately predicts market movement, they do not have to use the order type.[32] The Exchange states that, over time and based on client feedback, it would consider changes to the specific formula used to assess the quality of the market or would consider offering additional types of Discretionary Pegged Orders to serve the trading needs of different market participants, subject to filing separate proposed rule changes with the Commission.[33] Finally, the Exchange states that it does not anticipate that the proposed order type would have any disruptive effects on the overall market.[34]

IV. Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the

---

[15] *See* Amendment No. 1 at 5.

[16] *See supra* notes 4, 5, and 8.

[17] *See* IEX Letter at 1.

[18] *See id.*

[19] *See id.*, at 1–3.

[20] *See id.*, at 2.

[21] *See id.*, at 2–3.

[22] *See id.*, at 2.

[23] *See id.*, at 3. In its letter, the commenter also responds to the Exchange's comments on the D-Peg Order, which were set forth in the Notice. *See id.*, at 2. As noted above, the Commission granted IEX's application for registration as a national securities exchange, which included the D-Peg Order. *See supra* note 9. This order does not address comments and responses related to IEX's D-Peg Order.

[24] *See* Citadel Letter at 1. This commenter notes that the proposed Discretionary Pegged Order is virtually identical to IEX's D-Peg Order. *See id.* The commenter notes that it explained its concerns in more detail in its comment letter on IEX's exchange application. *See* Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, to Brent J. Fields, Secretary, Commission, dated April 14, 2016.

[25] *See* Citadel Letter at 2.

[26] *See id.*

[27] *See id.* In the context of IEX's D-Peg Order and the proposed Discretionary Pegged Order, the Exchange also requests that the Commission articulate the boundaries of when an exchange may or may not offer services that are otherwise performed by broker-dealers and when it would be appropriate for an exchange to monitor the quality of the prices in a market to determine how to price an order, and raises the issue of whether these order types are consistent with the Commission's previous disapproval of Nasdaq's benchmark orders. *See* Response Letter at 2–4. *See also* Notice, *supra* note 3, at 17751.

[28] *See* Response Letter at 3–4.

[29] *See* Amendment No. 1 at 4.

[30] *See id.*

[31] *See id.*

[32] *See* Response Letter at 4–5 and Amendment No. 1 at 4. The Exchange states its belief that the effectiveness of a particular order type in serving the trading needs of market participants should be market-driven. *See* Response Letter at 4.

[33] *See* Response Letter at 4. In its response letter, the Exchange also provides additional comments on IEX's exchange application. As noted above, the Commission granted IEX's exchange application, and this order does not address comments and responses related to IEX's D-Peg Order. *See supra* note 9.

[34] *See* Amendment No. 1 at 4.

[35] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[36] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the proposed Discretionary Pegged Order is based on IEX's D-Peg Order, although there are some differences between the two orders.[37] First, unlike IEX's D-Peg Order, the proposed Discretionary Pegged Order must have a limit price.[38] The Commission notes that this is not a novel aspect for this type of order because IEX's D-Peg Order is also permitted to have a limit price, although it is not required to have one.[39] Second, unlike IEX's D-Peg Order, the proposed Discretionary Pegged Order must have a Day time-in-force.[40] The Commission similarly notes that this is not a novel aspect for this type of order because IEX's D-Peg Order is also permitted to have the Day time-in-force, although it is permitted to have certain other times-in-force as well.[41] Third, if the PBBO is locked or crossed, an arriving or resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade,[42] whereas IEX's D-Peg Order can be priced and traded if the market is locked or crossed.[43] The Commission notes that the proposed treatment of Discretionary Pegged Orders when the market is locked or crossed is consistent with Exchange Rule 7.31P(h)(1)(B), which governs the treatment of other non-displayed pegged orders on the Exchange (*i.e.,* Market Pegged Orders) when the market is locked or crossed.

The Commission notes that, according to the Exchange, the proposed Discretionary Pegged Order would assist ETP Holders in obtaining best execution for their customers by limiting executions at the Midpoint Price when the PBBO is not stable, and by reducing the potential to execute at a stale price.[44] Moreover, the Commission notes that, in response to the comments, the Exchange acknowledges that an intentionally-delayed market may prevent arriving interest from interacting with pegged orders immediately, but states its belief that the proposed Discretionary Pegged Order would be effective, notwithstanding the differences in speed between the Exchange and IEX.[45]

With respect to questions regarding whether the proposed Discretionary Pegged Order would perform a function that is typically performed by broker-dealers, and whether approval of the proposed Discretionary Pegged Order would be inconsistent with the Commission's prior disapproval of Nasdaq's "benchmark orders," the Commission notes that, as with IEX's rules governing the D-Peg Order, proposed Rule 7.31P(h)(3) would delineate the specific conditions under which a Discretionary Pegged Order would or would not be eligible to execute up (down) to the Midpoint Price by setting forth the formula that the Exchange would use to determine quote stability. Also, as with IEX's D-Peg Order, the Exchange would encode in its rule the totality of the discretionary feature of the proposed Discretionary Pegged Order. As the Exchange notes in the proposal, the manner by which it would monitor the quality of the quotes would be objective and transparent, as set forth in the proposed rule.[46] As with IEX's D-Peg Order, the Commission does not believe that the hardcoded conditionality of the proposed order type would provide the Exchange with actual discretion or the ability to exercise individualized judgment when executing an order. The Commission also notes that the Exchange would be required to submit a proposed rule change pursuant to Section 19(b) of the Act prior to implementing any changes to the proposed order. Moreover, as with IEX's D-Peg Order, the Commission believes that the proposed Discretionary Pegged Order is distinguishable from Nasdaq's benchmark orders and does not implicate the same issues.[47]

With respect to a commenter's concern that approval of the proposed Discretionary Pegged Order would lead to the proliferation of complex predictive order types, the Commission notes that new exchange proposed order types are subject to the rule filing process of Section 19(b) of the Act and Rule 19b–4 under the Act, and the standards in Section 6(b) of the Act, among other provisions.[48]

With respect to a commenter's request that the Exchange use a different name for the proposed order in order to avoid confusion and misrepresentation regarding the nature of the order,[49] the Commission notes that the functionality of the proposed Discretionary Pegged Order is specifically delineated in proposed Rule 7.31P(h)(3). Moreover, the Commission notes that, currently, order types on different exchanges with nearly identical names may function differently.[50] As a result, the Commission does not believe the Exchange's use of the name "Discretionary Pegged Order" raises regulatory concerns.

Finally, the Commission notes that existing exchanges offer both discretion and pegging functionalities, including the combination of both of those functionalities in a single order type.[51] As with IEX's D-Peg Order, the proposed discretion functionality would be turned "on" or "off" depending on the Exchange's quote stability determination. Because the Exchange has encoded in its rule the totality of the discretionary feature of the proposed Discretionary Pegged Order, the Commission believes the proposed order type is a close variant of the discretion and pegging functionality that currently exist on other exchanges.

Based on the foregoing and the Exchange's representations, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

---

[36] 15 U.S.C. 78f(b)(5).

[37] *See supra* note 9.

[38] *See* Notice, *supra* note 3, at 17749.

[39] *See* IEX Rule 11.190(b)(10)(E).

[40] *See* Notice, *supra* note 3, at 17749.

[41] *See* IEX Rule 11.190(b)(10)(B).

[42] *See* Amendment No. 1 at 3–4.

[43] *See* IEX Rule 11.190(h)(3).

[44] *See* Notice, *supra* note 3, at 17751.

[45] *See supra* notes 29–34 and accompanying text (discussing in more detail the Exchange's response to comments).

[46] *See* Notice, *supra* note 3, at 17751.

[47] *See* IEX Order, *supra* note 9, at 41153 (discussing in more detail the differences between IEX's D-Peg Order and Nasdaq's benchmark orders).

[48] *See also* Form 19b–4, General Instructions.

[49] In its comment letter, this commenter references its "Patent-Pending 'DYNAMIC PEG ORDERS IN AN ELECTRONIC TRADING SYSTEM' in the U.S. patent application number 14/799,975, priority to August 22, 2014." However, this commenter states that its comment letter "speaks to deficiencies in NYSE's application in light of current market structure and is not intended to address, comment on or waive our property rights in the D-peg invention or related subject matter." *See* IEX Letter at note 2. In issuing this order, the Commission expresses no view with respect to these matters.

[50] *See, e.g.,* Exchange Rule 7.31P(h)(2) (describing the Exchange's "Primary Pegged Order") and IEX Rules 11.190(a)(3) and (b)(8) (describing IEX's "primary peg order").

[51] *See, e.g.,* Nasdaq Rule 4703(g).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–44 and should be submitted on or before July 22, 2016.

VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange added subsection (E) to proposed Rule 7.31P(h)(3), which would provide that if the PBBO is locked or crossed, both an arriving and resting Discretionary Pegged Order would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade. As noted above, this aspect of the proposed Discretionary Pegged Order is consistent with Exchange Rule 7.31P(h)(1)(B), which governs the treatment of other non-displayed pegged orders on the Exchange (*i.e.*, Market Pegged Orders) when the market is locked or crossed. In Amendment No. 1, the Exchange also provided additional responses to the comment letters and provided more information regarding the implementation date for the proposed rule change. These two changes do not alter the substance of the proposed rule change. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[53] that the proposed rule change (SR–NYSEArca–2016–44), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15718 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–32163; File No. 812–14523]

MainStay Funds Trust, *et al.*; Notice of Application

June 27, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: MainStay Funds Trust, The MainStay Funds and MainStay VP Funds Trust (each a "Trust" and collectively the "Trusts") and New York Life Investment Management LLC ("New York Life Investments").

Filing Dates: The application was filed on July 30, 2015, and amended on September 28, 2015, January 19, 2016, May 12, 2016, and June 20, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: New York Life Investment Management LLC, 51 Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Robert Shapiro, Senior Counsel, at (202) 551–7758 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust or a Delaware statutory trust and is registered under the Act as an open-end

---

[52] 15 U.S.C. 78s(b)(2).

[53] *Id.*

[54] 17 CFR 200.30–3(a)(12).

management investment company. Each Trust has issued shares of one or more Funds with its own distinctive investment objectives, policies and restrictions.[1] New York Life Investments, an indirect, wholly-owned subsidiary of New York Life, is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").[2] Any Adviser which serves as investment advisor to an applicant will be registered as an investment adviser under the Advisers Act.

2. At any particular time, those Funds with uninvested cash may, in effect, lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term money market instruments. At the same time, other Funds may need to borrow money from the same or similar banks for temporary purposes, to cover unanticipated cash shortfalls such as a trade "fail" or for other temporary purposes. The Funds are parties to an unsecured 364-day, $600 million revolving credit facility with a group of lenders (the "Credit Facility"), to meet unanticipated or excessive redemption requests.

3. If Funds that experience a cash shortfall were to borrow under the Credit Facility (or another credit facility), they would pay interest at a rate that is likely to be higher than the rate that could be earned by non-borrowing Funds on investments in repurchase agreements and other short-term money market instruments. Applicants assert the difference between the higher rate paid on a borrowing and what the bank pays to borrow under repurchase agreements or other arrangements represents the bank's profit for serving as the middleperson between a borrower and lender and is not attributable to any material difference in the credit quality or risk of such transactions.

4. The Funds seek to enter into master interfund lending agreements with each other (the "InterFund Program") that will allow each Fund whose policies permit it to do so to lend money directly to and borrow money directly from other Funds for temporary purposes through the InterFund Program (an "InterFund Loan").[3] Applicants state that the requested relief will enable the Funds to access an available source of money and reduce costs incurred by the Funds that need to obtain loans for temporary purposes and permit those Funds that have uninvested cash available: (i) To earn a return on the money that they might not otherwise be able to invest; or (ii) to earn a higher rate of interest on investment of their short-term balances. Although the proposed InterFund Program would reduce the Funds' need to borrow from banks or through custodian overdrafts, the Funds would be free to establish and/or continue lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the proposed InterFund Program would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate and also operational flexibility at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated cash volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions and fixed income instruments). However, redemption requests for the Funds normally are effected on the day following the trade date.[4] The InterFund Program would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also anticipate that a Fund could use the InterFund Program when a sale of securities "fails" due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. "Sales fails" may result in a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Applicants state that, in the event of a sales fail, the custodian typically extends temporary credit to cover the shortfall, and the Fund incurs overdraft charges. Alternatively, the Fund could: (i) "Fail" on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund; or (ii) sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the InterFund Program under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings (including the Credit Facility) and/or custodian overdrafts generally could supply Funds with a portion of the needed cash to cover unanticipated redemptions and sales fails, under the proposed InterFund Program, a borrowing Fund would pay lower interest rates than those that typically would be payable under short-term loans offered by banks or custodian overdrafts. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short-term money market instruments. Thus, applicants assert that the proposed InterFund Program would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any InterFund Loan (the "InterFund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," each as defined below. The Repo Rate would be the highest current overnight repurchase agreement rate available to a lending Fund. The Bank Loan Rate for any day would be calculated by the InterFund Program Team (as defined below) on each day an InterFund Loan is made according to a formula established by each Fund's board of trustees (the "Board") intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Fund. The formula would be based upon a publicly available rate (*e.g.*, Federal funds rate and/or LIBOR) plus an additional spread of basis points and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board. In addition, the Board periodically would review the continuing appropriateness of reliance on the formula used to determine the Bank Loan Rate, as well

---

[1] Applicants request that the order apply to any existing or future registered open-end management investment company or series thereof for which New York Life Investments or any successor thereto or an investment adviser controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with New York Life Investments or any successor thereto serves as investment adviser (each such investment company or series thereof, a "Fund" and collectively the "Funds" or each such investment adviser an "Adviser"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[2] All Funds that currently intend to rely on the requested order have been named as applicants. Any other Fund that relies on the requested order in the future will comply with the terms and conditions of the application.

[3] No money market fund advised by an Adviser that complies with the requirements of rule 2a–7 under the Act will participate in the InterFund Program as either a borrower or a lender.

[4] Applicants represent that although a significant amount of redemption requests for the Funds normally are effected on a trade date plus 1 (T+1) basis, redemption payments can take as long as seven days from receipt of a request in good order and may be delayed further in certain limited circumstances to the extent permitted by law.

as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Fund.

9. Certain members of the Trusts' administration personnel (other than investment advisory personnel) (the "InterFund Program Team") will administer the InterFund Program. No portfolio manager of any Fund will serve as a member of the InterFund Program Team. Under the proposed InterFund Program, the portfolio managers for each participating Fund would have the ability to provide standing instructions to participate daily as a borrower or lender. The InterFund Program Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. Once the InterFund Program Team has determined the aggregate amount of cash available for loans and borrowing demand, the InterFund Program Team will allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds. After the InterFund Program Team has allocated cash for InterFund Loans, the InterFund Program Team will invest any remaining cash in accordance with the standing instructions of the relevant portfolio manager or such remaining amounts will be invested directly by the portfolio managers of the Funds.

10. The InterFund Program Team will allocate borrowing demand and cash available for lending among the Funds on what the InterFund Program Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each InterFund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The procedures for allocating cash among borrowers and determining loan participations among lenders, together with related administrative procedures, will be approved by the Board, including a majority of the Board members who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Board Members"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The InterFund Program Team will: (a) Monitor the InterFund Loan Rate and the other terms and conditions of the InterFund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) implement and follow procedures designed to ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board of each Fund concerning any transactions by the applicable Fund under the InterFund Program and the InterFund Loan Rate.

12. New York Life Investments, through the InterFund Program Team, would administer the InterFund Program as a disinterested fiduciary as part of its duties under the investment management agreements with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the InterFund Program.

13. No Fund may participate in the InterFund Program unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the InterFund Program in its registration statement on Form N–1A; and (c) the Fund's participation in the InterFund Program is consistent with its investment objectives, investment restrictions, policies, limitations, and organizational documents.

14. As part of the Board's review of the continuing appropriateness of a Fund's participation in the proposed InterFund Program as required by condition 14, the Board members of the Fund, including a majority of the Independent Board Members, also will review the process in place to appropriately assess: (i) If the Fund participates as a lender, any effect its participation may have on the Fund's liquidity risk; and (ii) if the Fund participates as a borrower, whether the Fund's portfolio liquidity is sufficient to satisfy its obligations under the facility along with its other liquidity needs.

15. In connection with the InterFund Program, applicants request an order under section 6(c) of the Act exempting them from the provisions of sections 18(f) and 21(b) of the Act; under section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions.

Applicants' Legal Analysis:

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or affiliated person of an affiliated person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines "control" as the "power to exercise a controlling influence over the management or policies of a company," but excludes circumstances in which "such power is solely the result of an official position with such company." Applicants state that the Funds may be under common control by virtue of having common investment advisers and/or by having common trustees, managers and/or officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed transactions do not raise these concerns because: (a) New York Life Investments, through the InterFund Program Team members, would administer the InterFund Program as a disinterested fiduciary as part of its duties under the investment management and administrative

agreements with each Fund; (b) all InterFund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term investments; (c) the InterFund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through short-term repurchase agreements or certain other short-term investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an InterFund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1). Applicants also state that any pledge of securities to secure an InterFund Loan by the borrowing Fund to the lending Fund could constitute a purchase of securities for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an InterFund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed InterFund Program does not involve the type of abuse at which section 12(d)(1) of the Act was directed. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that New York Life Investments will receive no additional compensation for its services in administering the InterFund Program. Applicants also note that the purpose of the proposed InterFund Program is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to allow a Fund to borrow through the InterFund Program (because the lending Funds are not banks).

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined InterFund Loans and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed InterFund Program is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any joint transaction in which the investment company participates, unless, upon application, the transaction has been approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants assert that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants assert that the InterFund Program is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants assert that each Fund's participation in the proposed InterFund Program would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The InterFund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, when an interfund loan is to be made, the InterFund Program Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for InterFund Loans only if the InterFund Loan Rate is: (i) More favorable to the lending Fund than the Repo Rate; and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any InterFund Loan to the Fund will: (i) Be at an interest rate equal to or lower than the interest rate of any outstanding bank borrowing; (ii) be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (iii) have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (iv) provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that the event of default by the Fund,

will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund lending agreement, which both (aa) entitles the lending Fund to call the InterFund Loan immediately and exercise all rights with respect to any collateral and (bb) causes the call to be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may borrow on an unsecured basis through the InterFund Program only if the relevant borrowing Fund's outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the borrowing Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the lending Fund's InterFund Loan will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a borrowing Fund's total outstanding borrowings immediately after an InterFund Loan would be greater than 10% of its total assets, the Fund may borrow through the InterFund Program only on a secured basis. A Fund may not borrow through the InterFund Program or from any other source if its total outstanding borrowings immediately after the borrowing would be more than 33⅓% of its total assets or any lower threshold provided for by a Fund's fundamental restriction or non-fundamental policy.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, it must first secure each outstanding InterFund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding InterFund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter either: (i) Repay all its outstanding InterFund Loans; (ii) reduce its outstanding indebtedness to 10% or less of its total assets; or (iii) secure each outstanding InterFund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each InterFund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% of its total assets is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding InterFund Loan to Funds at least equal to 102% of the outstanding principal value of the InterFund Loans.

6. No Fund may lend to another Fund through the InterFund Program if the loan would cause the lending Fund's aggregate outstanding loans through the InterFund Program to exceed 15% of its current net assets at the time of the loan.

7. A Fund's InterFund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of InterFund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the InterFund Program, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each InterFund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the InterFund Program must be consistent with its investment objectives and limitations, and organizational documents.

12. The InterFund Program Team will calculate total Fund borrowing and lending demand through the InterFund Program, and allocate InterFund Loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The InterFund Program Team will not solicit cash for the InterFund Program from any Fund or prospectively publish or disseminate loan demand data to portfolio managers of the Funds. The InterFund Program Team will invest all amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the relevant portfolio manager or such remaining amounts will be invested directly by the portfolio managers of the Funds.

13. The InterFund Program Team will monitor the InterFund Loan Rate and the other terms and conditions of the InterFund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the InterFund Program and the terms and other conditions of any extensions of credit under the InterFund Program.

14. The Board, including a majority of its Independent Board Members, will:

(i) Review, no less frequently than quarterly, the participation of each Fund in the InterFund Program during the preceding quarter for compliance with the conditions of any order permitting such participation;

(b) establish the Bank Loan Rate formula used to determine the interest rate on InterFund Loans;

(c) review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(d) review, no less frequently than annually, the continuing appropriateness of the participation in the InterFund Program by each Fund it oversees.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the InterFund Program occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the InterFund Loan Rate, the rate of interest available at the time each InterFund Loan is made on overnight repurchase agreements and bank borrowings, and such other information presented to the Board of the Funds in connection with the review required by conditions 13 and 14.

16. In the event an InterFund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund lending agreement, the Adviser to the lending Fund promptly will refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning InterFund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the InterFund Program and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the InterFund Program, the Adviser will report on the operations of the InterFund Program at the Board's quarterly meetings. Each Fund's chief compliance officer, as defined in rule 38a–1(a)(4) under the Act, shall prepare an annual report for the Board each year that the Fund participates in the InterFund Program, that evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N–SAR as such Form may be revised, amended or superseded from time to time, for each year that the Fund participates in the InterFund Program, that certifies that the Fund and its Adviser have implemented procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the InterFund Loan Rate will be higher than the Repo Rate but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and

(e) that the InterFund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the InterFund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examination of the Fund, will review the operation of the InterFund Program for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the InterFund Program, upon receipt of requisite regulatory approval, unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15584 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78180; File No. SR–BatsBYX–2016–15]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period

June 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to extend the pilot period for the Exchange's Retail Price Improvement ("RPI") Program (the "Program"), which is currently set to expire on July 31, 2016, for 12 months, to expire on July 31, 2017.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2012, the Commission approved the RPI Program on a pilot basis.[5] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, all Exchange Users[6] are permitted to provide potential price improvement for Retail Orders[7] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").[8]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR–BYX–2012–019).

[6] A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[7] A "Retail Order" is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. *See* Rule 11.24(a)(2).

[8] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.[9] The Commission approved the Program on November 27, 2012.[10] The Exchange implemented the Program on January 11, 2013, and has extended the pilot period three times.[11] The pilot period for the Program is scheduled to end on July 31, 2016.

Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (''RPI Orders'') [12] to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.[13] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[14] Through this filing, the Exchange seeks to extend the current pilot period of the Program until July 31, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,[16] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends an established pilot program for 12 months, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder. Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.[21] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBYX–2016–15 on the subject line.

---

center must route interest pursuant to Regulation NMS Rule 611.

[9] *See* RPI Approval Order, *supra* note 5 at 71652.

[10] *Id.*

[11] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for BATS Y-Exchange, Inc.'s Retail Price Improvement (''RPI'') Program for 12 Months, To Expire on January 31, 2016); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR–BYX–2016–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period).

[12] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

[13] *See* RPI Approval Order, *supra* note 5 at 71655.

[14] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. *See* Letter from Anders Franzon, SVP, Associate General Counsel, Bats BYX Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated June 23, 2016.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(C).

[22] *Id.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–15, and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15717 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78177; File No. SR–CBOE–2016–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To List Options That Overlie the FTSE Developed Europe Index and the FTSE Emerging Index, To Raise the Comprehensive Surveillance Agreement Percentage Applicable to Certain Index Options, and To Amend the Maintenance Listing Criteria Applicable to Certain Index Options

June 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2016, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchanges seeks to list and trade options that overlie the FTSE Developed Europe Index and the FTSE Emerging Index ("FTSE Developed options" and "FTSE Emerging options"), raise the comprehensive surveillance agreement percentage applicable to options that overlie the MSCI EAFE Index and the MSCI Emerging Markets Index ("EAFE options" and "EM options"), and amend the maintenance listing criteria applicable to EAFE options, EM options, FTSE 100 Index options ("FTSE 100 options"), and FTSE China 50 Index options ("FTSE China 50 options"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list and trade FTSE Developed options and FTSE Emerging options, amend Rule 24.2.01(a)(7) to raise the comprehensive surveillance agreement ("CSA") percentage applicable to EAFE options and EM options,[3] and amend Rules 24.2.01(b)(1), 24.2.02(b)(1), and 24.2.03(b)(1) to modify the maintenance listing criteria applicable to EAFE options, EM options, FTSE 100 options,[4] and FTSE China 50 options.[5] FTSE Developed and FTSE Emerging options would be P.M., cash-settled contracts with European-style exercise.

FTSE Developed Europe Index Design, Methodology and Dissemination

The FTSE Developed Europe Index is a weighted index representing the performance of large- and mid-cap companies in Developed European markets. The index is comprised of over 500 securities from the following 15 countries: Austria, Belgium & Luxembourg, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands,

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities and Exchange Commission (the "Commission) approved CBOE's proposal to list and trade EAFE and EM options on April 8, 2015. *See* Securities Exchange Act Release No. 74681 (April 8, 2015), 80 FR 20032 (April 14, 2015) (approving SR–CBOE–2015–023).

[4] The Securities and Exchange Commission (the "Commission) approved CBOE's proposal to list and trade FTSE 100 options on December 11, 2015. *See* Securities Exchange Act Release No. 76626 (December 11, 2015), 80 FR 78794 (December 17, 2015) (approving SR–CBOE–2015–100).

[5] The Securities and Exchange Commission (the "Commission) approved CBOE's proposal to list and trade FTSE China 50 options on December 17, 2015. *See* Securities Exchange Act Release No. 76676 (December 17, 2015), 80 FR 79963 (December 23, 2015) (approving SR–CBOE–2015–099).

Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.[6]

The FTSE Developed Europe Index was launched on May 31, 2000 and is calculated by FTSE International Limited (''FTSE''), which is a provider of investment support tools. The FTSE Developed Europe Index is calculated and published on a real-time basis in British pounds and U.S dollars during U.K. and U.S. trading hours: From 2:00 a.m.–10:30 a.m. (Chicago time) the real-time index is calculated using real time prices of the securities. At 10:30 a.m. (Chicago time) the real-time index closes using the closing prices from the London Stock Exchange. Thus, between 10:30 a.m. and 3:15 p.m. (Chicago time) the FTSE Developed Europe Index level is a static value that market participants can access via data vendors.

The methodology used to calculate the FTSE Developed Europe Index is similar to the methodology used to calculate the value of other benchmark market-capitalization weighted indexes. Specifically, the FTSE Developed Europe Index is governed by the Ground Rules for the FTSE Global Equity Index Series.[7] The level of the FTSE Developed Europe Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in the FTSE Developed Europe Index by the index divisor.

The FTSE Developed Europe Index is monitored and maintained by FTSE. Adjustments to the FTSE Developed Europe Index could be made on a daily basis with respect to corporate events and dividends. FTSE reviews the FTSE Developed Europe Index semi-annually (March and September).[8]

Real-time data is distributed at least every 15 seconds while the index is being calculated using FTSE's real-time calculation engine to Bloomberg L.P. (''Bloomberg''), Thomson Reuters (''Reuters'') and other major vendors. End-of-day data is distributed daily to clients through FTSE as well as through major quotation vendors, including Bloomberg and Reuters.

The Exchange notes that FTSE Developed Europe Index futures contracts are listed for trading on the Chicago Mercantile Exchange (''CME'').[9]

FTSE Emerging Index Design, Methodology and Dissemination

The FTSE Emerging Index is a weighted index representing the performance of large- and mid-cap companies in advanced and secondary emerging markets. The index is comprised of approximately 950 securities from the following 22 countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Malaysia, Mexico, Pakistan, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, Turkey, and United Arab Emirates.[10]

The FTSE Emerging Index was launched on June 30, 2000 and is also calculated by FTSE.

The FTSE Emerging Index is calculated and published on a real-time basis in U.S. dollars during U.K. and U.S. trading hours: From 6:30 p.m. (Chicago time) (prior day) to 3:10 p.m. (Chicago time) (next day). At 3:10 p.m. (Chicago time) the real-time index closes using the closing prices from Brazil, Chile, Peru and Mexico. Thus, between 3:10 p.m. and 3:15 p.m. (Chicago time) the FTSE Emerging Index level is a static value that market participants can access via data vendors.

The methodology used to calculate the FTSE Emerging Index is similar to the methodology used to calculate the value of other benchmark market-capitalization weighted indexes. Specifically, the FTSE Emerging Index is also governed by the Ground Rules for the FTSE Global Equity Index Series.[11] The level of the FTSE Emerging Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in the FTSE Emerging Index by the index divisor.

The FTSE Emerging Index is monitored and maintained by FTSE. Adjustments to the FTSE Emerging Index could be made on a daily basis with respect to corporate events and dividends. FTSE reviews the FTSE Emerging Index semi-annually (March and September).[12]

Real-time data is distributed at least every 15 seconds while the index is being calculated using FTSE's real-time calculation engine to Bloomberg, Reuters and other major vendors. End-of-day data is distributed daily to clients through FTSE as well as through major quotation vendors, including Bloomberg and Reuters.

The Exchange notes that FTSE Emerging Index futures contracts are listed for trading on CME.[13]

Initial and Maintenance Listing Criteria

The FTSE Developed Europe Index and the FTSE Emerging Index each meet the definition of a broad-based index as set forth in Rule 24.1(i)(1).[14] In addition, the Exchange proposes to apply the initial and maintenance listing criteria currently only applicable to EAFE and EM options to FTSE Developed and FTSE Emerging options. Specifically, the Exchange proposes to amend Interpretation and Policy .01(a) to Rule 24.2, *Designation of the Index,* to provide that the Exchange may trade FTSE Developed and FTSE Emerging options if each of the following conditions is satisfied: (1) The index is broad-based, as defined in Rule 24.1(i)(1); (2) Options on the index are designated as P.M.-settled index options; (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) The index consists of 500 or more component securities; (5) All of the component securities of the index will have a market capitalization of greater than $100 million; (6) No single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the index; (7) Non-U.S. component securities (stocks or American Depositary Receipts (''ADRs'')) that are not subject to CSAs do not, in the aggregate, represent more than fifty percent (50%) of the weight of the FTSE Developed Europe Index or the FTSE Emerging Index;[15] (8) During

---

[6] *See* FTSE Developed Europe Index fact sheet (dated May 31, 2016) located at: *http://www.ftse.com/Analytics/FactSheets/Home/DownloadSingleIssue?issueName=AWDEURS.* Belgium and Luxembourg are listed as one country in the ''Country Breakdown.''

[7] Summary and comprehensive information about the FTSE Developed Europe Index methodology may be reviewed at: *http://www.ftse.com/products/downloads/FTSE_Global_Equity_Index_Series.pdf?840.*

[8] *See id.*

[9] *See* E-mini FTSE Developed Europe Index Futures contract specifications located at: *http://www.cmegroup.com/trading/equity-index/international-index/e-mini-ftse-developed-europe-index_contract_specifications.html.*

[10] *See* FTSE Emerging Index fact sheet (dated May 31, 2016) located at: *http://www.ftse.com/Analytics/FactSheets/Home/DownloadSingleIssue?issueName=AWALLE.*

[11] Summary and comprehensive information about the FTSE Emerging Index methodology may be reviewed at: *http://www.ftse.com/products/downloads/FTSE_Global_Equity_Index_Series.pdf?840.*

[12] *See id.*

[13] *See* E-mini FTSE Emerging Index Futures contract specifications located at: *http://www.cmegroup.com/trading/equity-index/international-index/e-mini-ftse-emerging-index_contract_specifications.html.*

[14] Rule 24.1(i)(1) defines a broad-based index to mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[15] Other than proposed listing criteria 7 of Rule 24.2.01(a) and maintenance listing criteria 1 of Rule

Continued

the time options on the index are traded on the Exchange, the current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors. However, the Exchange may continue to trade FTSE Developed and FTSE Emerging options after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors, provided that FTSE Developed Europe Index futures or FTSE Emerging Index futures contracts are trading and prices for those contracts may be used as a proxy for the current index value; (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and (10) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, pursuant to Interpretation and Policy .01(b) to Rule 24.2, the Exchange is proposing the following maintenance listing standards for FTSE Developed and FTSE Emerging options: (1) The conditions set forth in subparagraphs .01(a) (1), (2), (3), (4), (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs .01(a)(5), (6), and (7) must be satisfied only as of the first day of January and July in each year; and (2) The total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act").

The Exchange believes that P.M. settlement is appropriate for FTSE Developed and FTSE Emerging options due to the nature of these indexes that encompass multiple markets around the world. As to the FTSE Developed Europe Index, the components open with the start of trading in certain parts of Europe at approximately 2:00 a.m. (Chicago time) and close with the end of trading in Europe at approximately 10:30 a.m. (Chicago time) as closing prices from Ireland are accounted for in the closing calculation. The closing FTSE Developed Europe Index is distributed by FTSE between approximately 10:30 a.m. and 1:00 p.m. (Chicago time) each trading day.

As a result, there will not be a current FTSE Developed Europe Index level calculated and disseminated during a portion of the time during which FTSE Developed options would be traded (from approximately 10:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time)). However, the FTSE Developed Europe Index futures contract trades on CME during this time period.[16] The Exchange believes that the FTSE Developed Europe Index futures prices may be a proxy for the current FTSE Developed Europe Index level. Therefore, the Exchange believes that FTSE Developed options should be permitted to trade after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors, provided that FTSE Developed Europe Index futures contracts are trading and prices for those contracts may be used as a proxy for the current index value.

As to the FTSE Emerging Index, the components open with the start of trading in certain parts of Asia at approximately 6:30 p.m. (Chicago time) (prior day) and close with the end of trading in Mexico and Peru at approximately 3:10 p.m. (Chicago time) (next day) as closing prices from Brazil, Chile, Peru and Mexico, including late prices, are accounted for in the closing calculation. The closing FTSE Emerging Index level is distributed at approximately 3:10 p.m. (Chicago time) each trading day.

As a result, there will not be a current FTSE Emerging Index level calculated and disseminated during a portion of the time during which FTSE Emerging options would be traded (from approximately 3:10 p.m. (Chicago time) to 3:15 p.m. (Chicago time)). However, the FTSE Emerging Index futures contract trades on CME during this time period.[17] The Exchange believes that the FTSE Emerging Index futures prices may be a proxy for the current FTSE Emerging Index level. Therefore, the Exchange believes that FTSE Emerging options should be permitted to trade after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors, provided that FTSE Emerging Index futures contracts are trading and prices for those contracts may be used as a proxy for the current index value.

Because the FTSE Developed Europe Index and FTSE Emerging Index each has a large number of component securities and is representative of many countries, similar to other broad-based indexes, the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad-based indexes, the Exchange proposes various maintenance requirements, which require continual and periodic compliance.

Options Trading

Generally, the proposed trading rules for FTSE Developed and FTSE Emerging options would be the same except for their respective trading hours, which the Exchange will describe separately below. Exhibit 3 presents contract specifications for FTSE Developed and FTSE Emerging options.

The contract multiplier for FTSE Developed and FTSE Emerging options would be $100. FTSE Developed and FTSE Emerging options would be quoted in index points, and one point would equal $100. The minimum tick size for series trading below $3 would be 0.05 ($5.00) and at or above $3 will be 0.10 ($10.00).

Initially, the Exchange would list in-, at- and out-of-the-money strike prices. Additional series may be opened for trading as the underlying index level moves up or down.[18] The minimum

---

24.2.01(b), the Exchange is proposing to adopt the same listing criteria for FTSE Developed and FTSE Emerging options that are currently applicable to EAFE and EM options. *See infra* text on "MSCI EAFE and EM Indexes" for the discussion on raising the CSA percentage for EAFE and EM options and text on "Maintenance Listing Criteria" amending maintenance listing criteria for EAFE, EM, FTSE 100 and FTSE China 50 options.

[16] The trading hours for E-mini FTSE Developed Europe Index futures are from 5:00 p.m. (Chicago time) (prior day) to 4:00 p.m. (Chicago time) (next day), Sunday through Friday. *See* E-mini FTSE Developed Europe Index Futures contract specifications located at: *http://www.cmegroup.com/trading/equity-index/international-index/e-mini-ftse-developed-europe-index_contract_specifications.html.*

[17] The trading hours for E-mini FTSE Emerging Index futures are from 5:00 p.m. (Chicago time) (prior day) to 4:00 p.m. (Chicago time) (next day), Sunday through Friday. *See* E-mini FTSE Emerging Index Futures contract specifications located at: *http://www.cmegroup.com/trading/equity-index/international-index/e-mini-ftse-emerging-index_contract_specifications.html.*

[18] *See* Rules 24.9(a), 24.9.01 and 24.9.04. These rules set forth the criteria for listing additional series of the same class as the current value of the underlying index moves. Generally, additional series must be "reasonably related" to the current

strike price interval for FTSE Developed and FTSE Emerging options series would be 2.5 points if the strike price is less than 200. When the strike price is 200 or above, strike price intervals would be no less than 5 points.[19] New series would be permitted to be added up to the fifth business day prior to expiration.[20]

The Exchange would be permitted to list up to twelve near-term expiration months.[21] The Exchange would also be permitted to list up to ten expirations in Long-Term Index Option Series ("LEAPS")[22] on the FTSE Developed Europe Index and the FTSE Emerging Index and those indexes would be eligible for all other expirations permitted for other broad-based indexes, *e.g.*, End of Week/End of Month/Wednesday Expirations, Short Term Option Series and Quarterly Option Series.[23]

The trading hours for FTSE Developed options would be from 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time), except that trading in expiring FTSE Developed options would end upon the close of the London Stock Exchange (usually 10:30 a.m. Chicago time)[24] on their expiration date (usually a Friday). The Exchange is proposing that FTSE Developed options trade only during a portion of the day on their expiration date to align the trading hours of expiring FTSE Developed options with expiring FTSE Developed Europe Index futures. FTSE Developed Europe Index futures trade on CME and stop trading at 10:30 a.m. (Chicago time) on the third Friday of the futures contract month.[25]

The trading hours for FTSE Emerging options would be from 8:30 a.m. to 3:15 p.m. (Chicago time). The trading in expiring FTSE Emerging options would also end at 3:15 p.m. (Chicago time) on their expiration date (usually a Friday).

Exercise and Settlement

The proposed FTSE Developed and FTSE Emerging options would expire on the third Friday of the expiring month. Trading in expiring FTSE Developed options would cease upon the close of the London Stock Exchange (usually 10:30 a.m. Chicago time) on their expiration date (usually a Friday) and trading in expiring FTSE Emerging options would cease at 3:15 p.m. (Chicago time) on their expiration date (usually a Friday). When the last trading day/expiration date is moved because of an Exchange holiday or closure, the last trading day/expiration date for expiring options would be the immediately preceding business day.

Exercise would result in delivery of cash on the business day following expiration. FTSE Developed and FTSE Emerging options would be P.M.-settled. The exercise settlement value would be the official closing values of the FTSE Developed Europe Index and the FTSE Emerging Index as reported by FTSE on the last trading day of the expiring contract.[26]

The exercise settlement amount would be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier ($100).

If the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value would be determined in accordance with the rules and bylaws of The Options Clearing Corporation ("OCC").[27]

Position and Exercise Limits

The Exchange proposes to apply the default position limits for broad-based index options to FTSE Developed and FTSE Emerging options. Specifically, the chart set forth in Rule 24.4(a), *Position Limits for Broad-Based Index Options,* provides that the positions limits applicable to "other broad-based indexes" is 25,000 contracts (standard limit/on the same side of the market) and 15,000 contracts (near-term limit). Pursuant to Rule 24.5, *Exercise Limits,* the exercise limits for FTSE Developed and FTSE Emerging options would be equivalent to the near-term position limits for FTSE Developed and FTSE Emerging options. These same position and exercise limits would apply to FLEX trading. All position limit hedge exemptions would apply.

Margin

The Exchange proposes that FTSE Developed and FTSE Emerging options be margined as "broad-based index" options, and under CBOE rules, especially Rule 12.3(c)(5)(A), the margin requirement for a short put or call shall be 100% of the current market value of the contract plus 15% of the product of the current index group value and the applicable index multiplier, reduced by any out-of-the-money amount. There would be a minimum margin requirement of 100% of the current market value of the contract plus: 10% of the aggregate put exercise price amount in the case of puts, and 10% of the product of the current index group value and the applicable index multiplier in the case of calls. Additional margin may be required pursuant to Rules 12.3(h) and 12.10 (Margin Required is Minimum).

The Exchange believes that FTSE Developed and FTSE Emerging options are eligible products for portfolio margining under CBOE Rule 12.4. Accordingly, the Exchange proposes that FTSE Developed and FTSE Emerging options be allowed in portfolio margin accounts. CBOE proposes that the FTSE Developed Europe Index be treated as a high-capitalization, broad-based index to be housed in the European Market Product Group. The market moves utilized for the European Markets Product Group is −8%/+6%, with a 100% offset of gains and losses between products in the same Class Group and an 85% offset with the other classes contained in the Product Group.[28]

CBOE proposes that the FTSE Emerging Index be treated as a non-high-capitalization, broad-based index to be housed in the Emerging Markets Indexes Product Group. The market

---

index value, which means that strike prices must be within 30% of the current index value. Series exceeding the 30% range may be listed based on demonstrated customer interest.

[19] *See* proposed amendments to Rule 24.9.01(a) adding FTSE Developed and FTSE Emerging options as classes eligible for 2.5 point minimum strikes if the strike price is below 200.

[20] *See* Rule 24.9.01(c).

[21] *See* proposed amendments to Rule 24.9(a)(2). The Exchange is proposing to allow the listing of up to twelve expiration months at any one time for FTSE Developed and FTSE Emerging options.

[22] *See, e.g.,* Rule 24.9(b) (LEAPS). The Exchange may list LEAPS that expire from 12 to 180 months from the date of issuance; however, as noted in Exhibit 3, the Exchange is limiting FTSE Developed and FTSE Emerging LEAPS to expirations between 12 and 60 months. The Exchange may determine to list LEAPS that expire between 60 and 180 months at a later date without a rule filing.

[23] *See, e.g.,* Rules 24.9(e) (End of Week/End of Month/Wednesday Expirations), 24.9(a)(2)(A) (Short Term Option Series) and 24.9(a)(2)(B) (Quarterly Option Series).

[24] For example, Daylight Saving Time began in Chicago on March 13, 2016, and in London on March 27, 2016. If an expiration were to occur after Daylight Savings was observed in Chicago but prior to observance in London, trading in expiring FTSE Developed options would end at 11:30 a.m. (Chicago time). FTSE Emerging options are not affected by Daylight Savings as trading in expiring FTSE Emerging options ends at 3:15 p.m. (Chicago Time).

[25] *See* CME Rule 39002.G, available at: *http://www.cmegroup.com/rulebook/CME/IV/350/390.pdf.*

[26] *See* proposed amendment to Rule 24.1.01 to identify FTSE International Limited as the Reporting Authority for the FTSE Developed Europe Index and the FTSE Emerging Index. As the designated Reporting Authority for each of these indexes, the disclaimers set forth in Rule 24.14 (Disclaimers) would apply to FTSE International Limited.

[27] *See* Rule 24.7.

[28] A table detailing the currently existing portfolio margining Product Groups and their component class groups can be found at *http://www.optionsclearing.com/components/docs/risk-management/cpm/cpm_parameters.pdf.*

moves utilized for the Emerging Markets Indexes Product Groups are +/−10%, with a 100% offset of gains and losses between products in the same Class Group and an 85% offset with the other classes contained in the Product Group.

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to FTSE Developed and FTSE Emerging options. FTSE Developed and FTSE Emerging options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules,[29] margin requirements [30] and trading rules.[31]

The Exchange hereby designates FTSE Developed and FTSE Emerging options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).[32]

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for FTSE Developed and FTSE Emerging options and intends to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in FTSE Developed and FTSE Emerging options.

The Exchange is a member of the Intermarket Surveillance Group ("ISG"), which "covers major self-regulatory bodies across the world." "The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes." A list identifying the current ISG members is available at: *https://www.isgportal.org/home.html.*

The Exchange is also an affiliate member of the International Organization of Securities Commissions ("IOSCO"), which has members from over 100 different countries.[33] A list identifying the current ordinary IOSCO members is available at: *http://www.iosco.org/about/?subsection=membership&memid=1.* Finally, the Exchange has entered into CSAs with various stock exchanges.[34]

The FTSE Developed Europe Index is a broad-based index of which the component securities have a market capitalization of 7,073,781 (EUR Millions) and an average market capitalization per constituent of 13,397 (EUR Millions). Additionally, the component stocks have an average daily volume of over 2.8 billion with an average daily volume per constituent of over 5 million. Also, the largest constituent in the FTSE Developed Europe Index currently only accounts for 2.89% of the weight of the FTSE Developed Europe Index.

The FTSE Emerging Index is also a broad-based index of which the component securities have a market capitalization of 3,033,757 (USD Millions) and an average market capitalization per constituent of 3,118 (USD Millions). Additionally, the component stocks have an average daily volume of over 25 billion with an average daily volume per constituent of over 29 million. Also, the largest constituent in the FTSE Emerging Index currently only accounts for 3.93% of the weight of the FTSE Emerging Index.

Given the capitalization of the FTSE Developed Europe and FTSE Emerging Indexes and the deep and liquid markets for the securities underlying these Indexes, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced.

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of FTSE Developed and FTSE Emerging options. Because the proposal is limited to two new classes, the Exchange believes that the additional traffic that would be generated from the introduction of FTSE Developed and FTSE Emerging options would be manageable.

MSCI EAFE and EM Indexes

On April 8, 2015, the Commission approved CBOE's proposal to list and trade options on the MSCI EAFE Index ("EAFE Index") and the MSCI Emerging Markets Index ("EM Index").[35] On March 8, 2016, the Commission approved CBOE's proposal to amend Rule 24.2.01(a)(7) to raise the CSA percentage for the EAFE and EM Indexes by five percent (5%).[36] Pursuant to SR–CBOE–2016–016, Rule 24.2.01(a)(7) currently states that Non-U.S. component securities (stocks or ADRs) that are not subject to CSAs do not, in the aggregate, represent more than: (i) Twenty-five percent (25%) of the weight of the EAFE Index, and (ii) twenty-seven and a half percent (27.5%) of the weight of the EM Index. Because both the EAFE and EM Indexes are broad-based indexes, the component securities of the indexes have high market capitalizations, the indexes are comprised of over 500 constituents, and no single component comprises more than 5% of the weight of either index, all of which makes the indexes not easily subject to market manipulation, the Exchange proposes to amend Rule 24.2.01(a)(7) to raise the CSA percentage for the EAFE and EM Indexes to fifty percent (50%).[37]

The EAFE Index consists of the following 21 developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway,

---

[29] *See* Chapter IX (Doing Business with the Public).

[30] *See* Chapter XII (Margins).

[31] *See, e.g.,* Chapters IV (Business Conduct), VI (Doing Business on the Trading Floor), VIII (Market-Makers, Trading Crowds and Modified Trading Systems) and XXIV (Index Options).

[32] *See* proposed amendments to Rules 24A.7, *Position Limits and Reporting Requirements,* and 24B.7, *Position Limits and Reporting Requirements,* providing that the position limits for FLEX Index options on the FTSE Developed Europe Index and on the FTSE Emerging Index would be equal to the position limits for Non-FLEX options on those indexes. Per existing Rules 24A.8, *Exercise Limits,* and 24B.8, *Exercise Limits,* the exercise limits for FLEX FTSE Developed and FTSE Emerging option would be equivalent to the position limits for FLEX FTSE Developed and FTSE Emerging options.

[33] There are three categories of IOSCO members: Ordinary, associate and affiliate. In general, the ordinary members (125) are the national securities commissions in their respective jurisdictions. Associate members (18) are usually agencies or branches of government, other than the principal national securities regulator in their respective jurisdictions that have some regulatory competence over securities markets, or intergovernmental international organizations and other international standard-setting bodies, such as the IMF and the World Bank, with a mission related to either the development or the regulation of securities markets. Affiliate members (64) are self-regulatory organizations, stock exchanges, financial market infrastructures, investor protection funds and compensation funds, and other bodies with an appropriate interest in securities regulation. *See* IOSCO Fact Sheet located at: *http://www.iosco.org/about/pdf/IOSCO-Fact-Sheet.pdf.*

[34] CSAs can be in the form of Memoranda of Understanding ("MOUs") or information sharing agreements.

[35] *See* Securities Exchange Act Release No. 74681 (April 8, 2015), 80 FR 20032 (April 14, 2015) (approving SR–CBOE–2015–023).

[36] *See* Securities Exchange Act Release No. 77319 (March 8, 2016), 81 FR 13429 (March 14, 2016) (approving SR–CBOE–2016–016).

[37] The Exchange is proposing to make this CSA percentage applicable to FTSE Developed and FTSE Emerging options because both the FTSE Developed Europe and FTSE Emerging Indexes are broad-based indexes, the component securities of the indexes have high market capitalizations, the indexes are comprised of over 500 constituents, and no single component comprises more than 5% of the weight of either index, which makes the indexes not easily susceptible to manipulation.

Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. The EAFE Index consists of large- and mid-cap components, has 925 constituents and "covers approximately 85% of the free float-adjusted market capitalization in each country." [38] Furthermore, the EAFE Index is a broad-based index of which the component securities have a market capitalization of 12,021,032.52 (USD Millions) and an average market capitalization per constituent of 12,995.71 (USD Millions). Additionally, the component stocks have an average daily volume of over 5 billion with an average daily volume per constituent of over 5 million. Also, the largest constituent in the EAFE Index currently accounts for less than 2% of the weight of the EAFE Index.

The EM Index consists of the following 23 emerging market country indexes [sic]: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates. The EM Index consists of large- and mid-cap components, has 837 constituents and "covers approximately 85% of the free float-adjusted market capitalization in each country." [39] Furthermore, the EM Index is a broad-based index of which the component securities have a market capitalization of 3,506,908.00 (USD Millions) and an average market capitalization per constituent of 4,189.85 (USD Millions). Additionally, the component stocks have an average daily volume of over 25 billion with an average daily volume per constituent of over 30 million. Also, the largest constituent in the EM Index currently accounts for less than 3.5% of the weight of the EM Index.

Given the high number of constituents and capitalization of the EAFE and EM Indexes and the deep and liquid markets for the securities underlying these indexes, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. Additionally, the Exchange represents that raising the CSA percentage will not have an adverse impact on the Exchange's surveillance program. The Exchange represents that it will still have an adequate surveillance program in place for EAFE and EM options and will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in EAFE and EM options.

The Exchange notes that equity exchanges are not required to have any CSAs in place to list ETFs that seek to track the EAFE, EM, FTSE Developed, and FTSE Emerging Indexes.[40] Additionally, CBOE is not required to have any CSAs in place to list and trade options on an ETF that seeks to track these indexes as long as the ETF is listed in accordance with an equity exchange's generic listing criteria under which CSAs are not required.[41] Finally, futures exchanges are similarly not required to have any CSAs in place to list futures on the EAFE, EM, FTSE Developed and FTSE Emerging Indexes.[42]

Maintenance Listing Criteria

The Exchange is seeking to amend Rules 24.2.01(b)(1), 24.2.02(b)(1), and 24.2.03(b)(1) to modify the maintenance listing criteria applicable to EAFE options, EM options, FTSE 100 options, and FTSE China 50 options. Currently, Rules 24.2.01(b)(1), 24.2.02(b)(1), and 24.2.03(b)(1) state, as applicable, that the listing criteria set forth in subparagraphs .01(a)(5) and (6), .02(a)(5) and (6), and .03(a)(5) and (6) to Rule 24.2 ("listing criteria 5 and 6") [43] need only be met as of the first day of January and July in each year. The Exchange is seeking to amend Rules 24.2.01(b)(1), 24.2.02(b)(1), and 24.2.03(b)(1) [44] to specify that listing criteria set forth in subparagraphs .01(a)(7), .02(a)(7), and .03(a)(7) to Rule 24.2 ("listing criteria 7") [45] need also only be met as of the first of January and July in each year. The Exchange is not seeking to amend the frequency with which listing criteria 5 and 6 are reviewed; rather, the Exchange is seeking to specify the frequency with which the listing criteria 7 is reviewed. The substantive analysis involved in reviewing listing criteria 5, 6, and 7 is similar. Each review involves an analysis of the market capitalization of individual components and resulting changes to the weights those individual components contribute to indexes; thus, it's appropriate to review those criteria at the same time.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[46] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [47] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will further the Exchange's goal of introducing new and innovative products to the marketplace. Currently, the Exchange believes that there is unmet market demand for exchange-listed security options listed on these two popular cash indexes. FTSE Developed Europe and FTSE Emerging Index futures are listed for trading on CME. As a result, CBOE believes that FTSE Developed and FTSE Emerging options are designed to provide different and additional opportunities for investors to hedge or speculate on the market risk associated with the FTSE Developed and FTSE Emerging Indexes by listing an option directly on these indexes.

The Exchange believes that both the FTSE Developed Europe Index and FTSE Emerging Index are not easily susceptible to manipulation. Both indexes are broad-based indexes and have high market capitalizations. The FTSE Developed Europe Index is comprised of 528 component stocks, the component stocks have a market capitalization 7,073,781 (EUR Millions) and average daily volume of over 2.8 billion, and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Similarly, the FTSE Emerging Index is comprised of 973 components stocks, the component stocks have a market capitalization of 3,033,757 (USD Millions) and average daily volume of over 25 billion, and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Due to both indexes having a large number of component securities, high market capitalization, and being representative of many countries, similar to other broad-based indexes, the Exchange believes that the initial listing requirements are appropriate to trade options on these indexes. In addition, similar to other broad-based indexes, the Exchange proposes to adopt various maintenance criteria, which would require continual compliance and periodic compliance.

---

[38] *See* EAFE Index fact sheet (dated May 31, 2016) located at: *http://www.msci.com/resources/factsheets/index_fact_sheet/msci-eafe-index-usd-price.pdf.*

[39] *See* EM Index fact sheet (dated May 31, 2016) located at: *http://www.msci.com/resources/factsheets/index_fact_sheet/msci-emerging-markets-index-usd-price.pdf.*

[40] *See e.g.,* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii).

[41] *See* Rule 5.3.06(C)(i).

[42] *See, e.g.,* CME Rulebook Chapters 390—*E-mini FTSE Developed Europe Index Futures* and 391—*E-mini FTSE Emerging Index Futures;* and ICE Futures Chapters 40—*MSCI EAFE Mini Index Futures* and 41—*MSCI Emerging Markets Mini Index Futures.*

[43] Listing criteria 5 provides that all of the component securities of the index will have a market capitalization of greater than $100 million. Listing criteria 6 provides that no single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the index.

[44] Current Rule 24.2.03(b) and (b)(1) mistakenly references paragraph .02(a), instead of .03(a); thus, the Exchange is also amending Rule 24.2.03(b) to correct the technical error.

[45] Listing criteria 7 generally provides that non-U.S. component securities (stocks or American Depositary Receipts ("ADRs")) that are not subject to CSAs do not, in the aggregate, represent more than a certain percent of the weight of the applicable index. As previously noted, this proposal seeks to amend the listing criteria 7 applicable to EAFE and EM options and apply that same percentage to FTSE Developed and FTSE Emerging options. This proposal does not seek to amend the listing criteria 7 applicable to FTSE 100 and FTSE China 50 options; however, as noted above, this proposal does seek to amend the maintenance listing criteria for EAFE, EM, FTSE 100, and FTSE China 50 options.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

With regards to the CSA percentage applicable to FTSE Developed and FTSE Emerging options in particular, the purpose of a CSA is to allow the Exchange to investigate manipulation if it were to occur on an exchange at which one of the component securities trades. However, as described above, the FTSE Developed Europe and FTSE Emerging Indexes are unlikely to be susceptible to manipulation; thus, requiring fifty (50%) of the component securities to be subject to CSAs for the FTSE Developed Europe and the FTSE Emerging Indexes is unlikely to affect the Exchange's ability to investigate manipulation. Additionally, the Commission is in the best position to investigate potential manipulation occurring on foreign exchanges because the Commission has bilateral and multilateral information sharing agreements with foreign regulators in countries all over the world;[48] thus, whether the Exchange receives information pursuant to a CSA or not, the Exchange can refer potential manipulation cases to the Commission. The Exchange notes that it is the practice today to refer cases to the Commission when the Exchange does not have jurisdiction over the potentially offending market participants, and the Exchange is unlikely to have jurisdiction over a market participant potentially manipulating markets on a foreign exchange. In addition, it is more than likely that market participants trading on foreign exchanges are subject to anti-manipulation laws in those jurisdictions,[49] which further limits the likelihood that these indexes will be manipulated.

FTSE Developed and FTSE Emerging options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules,[50] margin requirements[51] and trading rules.[52] The Exchange would apply the same default position limits for broad-based index options to FTSE Developed and FTSE Emerging options. Specifically, the applicable position limits would be 25,000 contracts (standard limit/on the same side of the market) and 15,000 contracts (near-term limit). The exercise limits for FTSE Developed and FTSE Emerging options would be equivalent to the position limits for EAFE and EM options. These same position and exercise limits would apply to FLEX trading. All position limit hedge exemptions would apply. The Exchange would apply existing index option margin requirements to the purchase and sale of FTSE Developed and FTSE Emerging options.

The Exchange represents that is has an adequate surveillance program in place for FTSE Developed and FTSE Emerging options. The Exchange also represents that it has the necessary systems capacity to support the new option series.

With regards to the CSA percentage applicable to EAFE and EM options, both the MSCI EAFE and MSCI EM Indexes are not easily susceptible to manipulation. Both indexes are broad-based indexes and have high market capitalizations. The EAFE Index is comprised of 925 component stocks, the component stocks have a market capitalization of 12,021,032.52 (USD Millions) and average daily volume of over 5 billion, and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Similarly, the EM Index is comprised of 837 components stocks, the component stocks have a market capitalization of 3,506,908.00 (USD Millions) and average daily volume of over 25 billion, and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. As previously noted, the purpose of a CSA is to allow the Exchange to investigate manipulation if it were to occur on an exchange at which one of the component securities trades. However, as described above, the EAFE and EM Indexes are unlikely to be susceptible to manipulation; thus, raising the CSA percentage for the EAFE and EM Indexes to fifty (50%) is unlikely to affect the Exchange's ability to investigate manipulation. Additionally, as noted above, the Commission is in a prime position to investigate potential manipulation occurring on foreign exchanges, and the Exchange can always refer investigations to the Commission. Also, as previously noted, equity exchanges are not required to have any CSAs in place to list ETFs that seek to track the EAFE, EM, FTSE Developed, and FTSE Emerging Indexes, and CBOE is not required to have any CSAs in place to list and trade options on an ETF that seeks to track these indexes as long as the ETF is listed in accordance with an equity exchange's generic listing criteria under which CSAs are not required. Thus, the proposed CSA percentage promotes just and equitable principles of trade and a free and open market by more equally applying CSA percentages to similar products.

---

[48] For example, the Commission's own Web site specifically identifies the multilateral memorandum of understanding created by the International organization of Securities Commissions, whereby the signatories, including the Commission, agreed: To provide certain critical information, to permit use of that information in civil or administrative proceedings, to onward share information with self-regulatory organizations and criminal authorities, and to keep such information confidential. In particular, the MMOU provides for the following: Sharing information and documents held in the regulators' files; obtaining information and documents regarding transactions in bank and brokerage accounts, and the beneficial owners of such accounts; and taking or compelling a person's statement or, where permissible, a person's testimony. The MMOU has significantly enhanced the SEC's enforcement program by increasing and expediting the SEC's ability to obtain information from a growing number of jurisdictions worldwide. *See* SEC's Cooperative Arrangements with Foreign Regulators Factsheet, available at: *https://www.sec.gov/about/offices/oia/oia_coopfactsheet.htm.* A list of the current signatories to the IOSCO multilateral memorandum of understanding is available at: *https://www.iosco.org/about/?subSection=mmou&subSection1=signatories.* A list of the Commission's Cooperative Arrangements with Foreign Regulators is available at: *https://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml.*

[49] *See, e.g.,* Article 5 of European Union Directive 2003/6/EC (stating that member states shall prohibit any person from engaging in market manipulation), available at: *http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0006;* Article 15 of European Union Regulation 596/2014, which replaces Directive 2003/6/EC (stating that a person shall not engage in or attempt to engage in market manipulation); available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0596;* Article 16 of European Union Regulation 596/2014 (stating that market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation); Rule 545 of the Stock Exchange of Hong Kong, available at: *https://www.hkex.com.hk/eng/rulesreg/traderules/sehk/Documents/chap-5_eng.pdf;* Rule 8.10 of the Johannesburg Stock Exchange, available at: *https://www.jse.co.za/content/JSERulesPoliciesandRegulationItems/JSE%20Equities%20Rules.pdf.*

[50] *See* Chapter IX (Doing Business with the Public).

[51] *See* Chapter XII (Margins).

[52] *See, e.g.,* Chapters IV (Business Conduct), VI (Doing Business on the Trading Floor), VIII (Market-Makers, Trading Crowds and Modified Trading Systems) and XXIV (Index Options).

Finally, with regards to amending the maintenance listing criteria applicable to EAFE, EM, FTSE 100, and FTSE China 50 options, the substantive analysis of reviewing the listing criteria set forth in subparagraphs .01(a)(5) and (6), .02(a)(5) and (6), and .03(a)(5) and (6) to Rule 24.2 is similar to the analysis involved in reviewing the listing criteria set forth in subparagraphs .01(a)(7), .02(a)(7), and .03(a)(7) to Rule 24.2. Thus, it's appropriate, and generally supportive of the protection of investors and the public interest, to review those criteria at the same time as it strikes the appropriate balance between ensuring the Exchange has the ability to access information to conduct investigative activities with the Exchange efficiently and effectively deploying Exchange resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes that the introduction of new cash index options will enhance competition among market participants and will provide a new type of options to compete with domestic products such as FTSE Developed Europe and FTSE Emerging Index futures and European-traded derivatives on the FTSE Developed Europe and FTSE Emerging Indexes to the benefit of investors and the marketplace. With regards to the CSA percentage applicable to EAFE, EM, FTSE Developed, and FTSE Emerging options, the Exchange considers this a competitive filing. As noted above, equity exchanges are not required to have any CSAs in place to list ETFs that seek to track the EAFE, EM, FTSE Developed, and FTSE Emerging Indexes.[53] Additionally, CBOE is not required to have any CSAs in place to list and trade options on an ETF that seeks to track these indexes as long as the ETF is listed in accordance with an equity exchange's generic listing criteria under which CSAs are not required.[54] Futures exchanges are similarly not required to have any CSAs in place to list futures on the EAFE, EM, FTSE Developed and FTSE Emerging Indexes.[55] Finally, modifying the maintenance listing criteria applicable to EAFE, EM, FTSE 100, and FTSE China 50 options as proposed will not impose any burden on competition—intermarket or otherwise—because maintenance listing criteria are applicable to products, not market participants, and, thus, are unrelated to competition among market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–049.This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–049 and should be submitted on or before July 22,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15716 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78162; File No. SR–BatsEDGA–2016–14]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 13.8(b) Identifying Certain Transactions as the Bats One Opening Price or the Bats One Closing Price

June 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

---

[53] *See, e.g.,* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii).

[54] *See* Rule 5.3.06(C)(i).

[55] *See, e.g.,* CME Rulebook Chapters 390—*E-mini FTSE Developed Europe Index Futures* and 391—*E-mini FTSE Emerging Index Futures;* and ICE Futures Chapters 40—*MSCI EAFE Mini Index Futures* and 41—*MSCI Emerging Markets Mini Index Futures.*

[56] 17 CFR 200.30–3(a)(12).

"Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the content of the Bats One Feed under Rule 13.8(b) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price."

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the content of the Bats One Feed under Rule 13.8(b) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price." The last sale information described below that the Exchange proposes to identify as the Bats One Opening or Closing Price is currently included in the Bats One Feed. The Exchange notes that it is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGA and its affiliated exchanges [3] and for which the Bats Exchanges reports [sic] quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.[4]

The last sale information disseminated as part of the Bats One Feed includes the price, size, time of execution, and individual Bats Exchange on which the trade was executed. The last sale information also includes the cumulative number of shares executed on all Bats Exchanges for that trading day.[5]

The Exchange now proposes to identify certain last sale transactions as the Bats One Opening Price or the Bats One Closing Price. For securities listed on BZX,[6] the Bats One Opening Price would be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) [7] and the Bats One Closing Price would be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3).[8] For securities not listed on BZX, the Bats One Opening Price would be the first last sale eligible trade [9] that occurred on a Bats Exchange after 9:30 a.m. Eastern Time. That first trade would be identified as the Bats One Opening Price when disseminated via the Bats One Feed. The Bats One Closing Price for non-BZX listed securities would be the final last sale eligible trade to occur on a Bats Exchange prior to 4:00 p.m. Eastern Time. The Bats One Closing Price would be disseminated via the Bats One Feed after 4:00 p.m. Eastern Time. The Exchange would not disseminate a Bats One Opening or Closing Price for a particular trading day when a trade satisfying the above criteria does not occur.

In addition, the Bats One Opening and Closing Price for BZX listed securities are included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. Also, the Bats One Opening and Closing Prices for non-BZX listed securities is derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [12] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the market data provider industry.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EDGA's affiliated exchanges are the Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX"), and Bats EDGX Exchange, Inc. ("EDGX", together with EDGA, BZX, and BYX, the "Bats Exchanges").

[4] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[5] The Bats One Feed also contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels for all securities that are traded on the Bats Exchanges in addition to the Bats One Summary Feed ("Bats One Premium Feed"). For each price level on one of the Bats Exchanges, the Bats One Premium Feed includes a two-sided quote and the number of shares available to buy and sell at that particular price level.

[6] A BZX listed security is a security listed on the BZX pursuant to Chapter 14 of BZX's Rules.

[7] The term "BZX Official Opening Price" is the price disseminated to the consolidated tape as the market center opening trade. *See* BZX Rule 11.23(a)(5). In the event that there is no opening auction for a BZX listed security, the BZX Official Opening Price will be the price of the final last sale eligible trade, which will be the previous BZX Official Closing Price. *See* BZX Rule 11.23(b)(2)(B).

[8] The term "BZX Official Closing Price" is the price disseminated to the consolidated tape as the market center closing trade. *See* BZX Rule 11.23(a)(3). In the event that there is no closing auction for a BZX listed security, the BZX Official Closing Price will be the price of the final last sale eligible trade. *See* BZX Rule 11.23(c)(2)(B).

[9] A last sale eligible trade must be of at least one round lot. A round lot consists of one hundred (100) shares. *See* Exchange Rule 11.6(s).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying certain transactions as the Bats One Opening or Closing Price to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information.

Lastly, the proposal would not permit unfair discrimination because the information will be available to all investors and market data vendors on an equivalent basis. In addition, any investor that wishes to receive such information via a different source will be able to do so. As noted above, the Exchange is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. Specifically, that the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities are currently provided and disseminated via the consolidated tape[14] and included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. In addition, investors can also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as prices of the first and final last sale eligible transaction to occur during Regular Trading Hours[15] are posted to the consolidated tape. Also, the Bats One Opening and Closing Prices for non-BZX listed securities are derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposal will impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act. A vendor seeking to offer a similar product by identifying certain transaction as an opening or closing price would be able to do so on the same terms as the Exchange. As discussed in in [sic] the Bats One Approval Order,[16] any entity may separately purchase the individual underlying products, and if they so choose, perform an aggregation and consolidation function similar to that which the Exchange performs in creating the Bats One Feed. Any entity may offer a data feed with the same information included in the Bats One Feed to sell and distribute it to its clients with no greater cost than the Exchange. Likewise, a competing vendor could independently identify certain transaction as an opening or closing price and include such information as part of their product to be disseminated to their customers. As discussed above, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities is currently provided to and disseminated via the consolidated tape.[17] A competing market data vendor could also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as such prices are the first and final last sale eligible transaction to occur during Regular Trading Hours. Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–14 and should be submitted on or before July 22, 2016.

---

[14] *See* BZX Rule 11.23(a)(3) and (5).

[15] Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Exchange Rule 1.5(y).

[16] *See* Bats One Approval Order, *supra* note 4.

[17] *See* BZX Rule 11.23(a)(3) and (5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15580 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78163; File No. SR–BatsEDGX–2016–25]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 13.8(b) Identifying Certain Transactions as the Bats One Opening Price or the Bats One Closing Price

June 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the content of the Bats One Feed under Rule 13.8(b) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price."

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the content of the Bats One Feed under Rule 13.8(b) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price." The last sale information described below that the Exchange proposes to identify as the Bats One Opening or Closing Price is currently included in the Bats One Feed. The Exchange notes that it is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGX and its affiliated exchanges[3] and for which the Bats Exchanges reports [sic] quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.[4]

The last sale information disseminated as part of the Bats One Feed includes the price, size, time of execution, and individual Bats Exchange on which the trade was executed. The last sale information also includes the cumulative number of shares executed on all Bats Exchanges for that trading day.[5]

The Exchange now proposes to identify certain last sale transactions as the Bats One Opening Price or the Bats One Closing Price. For securities listed on BZX,[6] the Bats One Opening Price would be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5)[7] and the Bats One Closing Price would be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3).[8] For securities not listed on BZX, the Bats One Opening Price would be the first last sale eligible trade[9] that occurred on a Bats Exchange after 9:30 a.m. Eastern Time. That first trade would be identified as the Bats One Opening Price when disseminated via the Bats One Feed. The Bats One Closing Price for non-BZX listed securities would be the final last sale eligible trade to occur on a Bats Exchange prior to 4:00 p.m. Eastern Time. The Bats One Closing Price would be disseminated via the Bats One Feed after 4:00 p.m. Eastern Time. The Exchange would not disseminate a Bats One Opening or Closing Price for a particular trading day when a trade satisfying the above criteria does not occur.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EDGX's affiliated exchanges are the Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX"), and Bats EDGA Exchange, Inc. ("EDGA", together with EDGX, BZX, and BYX, the "Bats Exchanges").

[4] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[5] The Bats One Feed also contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels for all securities that are traded on the Bats Exchanges in addition to the Bats One Summary Feed ("Bats One Premium Feed"). For each price level on one of the Bats Exchanges, the Bats One Premium Feed includes a two-sided quote and the number of shares available to buy and sell at that particular price level.

[6] A BZX listed security is a security listed on the BZX pursuant to Chapter 14 of BZX's Rules.

[7] The term "BZX Official Opening Price" is the price disseminated to the consolidated tape as the market center opening trade. *See* BZX Rule 11.23(a)(5). In the event that there is no opening auction for a BZX listed security, the BZX Official Opening Price will be the price of the final last sale eligible trade, which will be the previous BZX Official Closing Price. *See* BZX Rule 11.23(b)(2)(B).

[8] The term "BZX Official Closing Price" is the price disseminated to the consolidated tape as the market center closing trade. *See* BZX Rule 11.23(a)(3). In the event that there is no closing auction for a BZX listed security, the BZX Official Closing Price will be the price of the final last sale eligible trade. *See* BZX Rule 11.23(c)(2)(B).

[9] A last sale eligible trade must be of at least one round lot. A round lot consists of one hundred (100) shares. *See* Exchange Rule 11.6(s).

In addition, the Bats One Opening and Closing Price for BZX listed securities are included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. Also, the Bats One Opening and Closing Prices for non-BZX listed securities is derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[12] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the market data provider industry.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying certain transactions as the Bats One Opening or Closing Price to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information.

Lastly, the proposal would not permit unfair discrimination because the information will be available to all investors and market data vendors on an equivalent basis. In addition, any investor that wishes to receive such information via a different source will be able to do so. As noted above, the Exchange is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. Specifically, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities are currently provided and disseminated via the consolidated tape[14] and included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. In addition, investors can also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as prices of the first and final last sale eligible transaction to occur during Regular Trading Hours[15] are posted to the consolidated tape. Also, the Bats One Opening and Closing Prices for non-BZX listed securities are derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposal will impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act. A vendor seeking to offer a similar product by identifying certain transaction as an opening or closing price would be able to do so on the same terms as the Exchange. As discussed in in [sic] the Bats One Approval Order,[16] any entity may separately purchase the individual underlying products, and if they so choose, perform an aggregation and consolidation function similar to that which the Exchange performs in creating the Bats One Feed. Any entity may offer a data feed with the same information included in the Bats One Feed to sell and distribute it to its clients with no greater cost than the Exchange. Likewise, a competing vendor could independently identify certain transaction as an opening or closing price and include such information as part of their product to be disseminated to their customers. As discussed above, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities is currently provided to and disseminated via the consolidated tape.[17] A competing market data vendor could also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as such prices are the first and final last sale eligible transaction to occur during Regular Trading Hours. Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

---

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

[14] *See* BZX Rule 11.23(a)(3) and (5).

[15] Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Exchange Rule 1.5(y).

[16] *See* Bats One Approval Order, *supra* note 4.

[17] *See* BZX Rule 11.23(a)(3) and (5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-BatsEDGX–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsEDGX–2016–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX–2016–25 and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15581 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78176; File No. SR–NYSEMKT–2016–61]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Amex Options Rule 960NY in Order To Extend the Penny Pilot Through December 31, 2016

June 28, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 17, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to NYSE Amex Options Rule 960NY in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2016. The Pilot Program is currently scheduled to expire on June 30, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Exchange Rule 960NY to extend the time period of the Pilot Program,[4] which is currently scheduled to expire on June 30, 2016, through December 31, 2016. The Exchange also proposes that the dates to replace issues in the Pilot Program that have been delisted be revised to the second trading day following July 1, 2016.[5]

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

---

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR–NYSEMKT–2015–43).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on June 30, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between NYSE Amex Options market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–61 and should be submitted on or before July 22,2016.

---

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15715 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78171; File No. SR–BOX–2016–25]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7150 (Price Improvement Period ("PIP")) To Establish the Quality Market Maker Allocation in a PIP Order

June 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7150 (Price Improvement Period ("PIP")) to establish the Quality Market Maker allocation in a PIP Order. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 7150 (Price Improvement Period ("PIP")) to establish the Quality Market Maker allocation in a PIP Order. This is a competitive filing that is based on a proposal recently submitted by NASDAQ OMX BX, Inc. ("BX") and approved by the Commission.[3]

PIP

The Exchange currently offers Participants the possibility of price improvement via its electronic auction process known as the PIP. The PIP has saved investors more than $722 million versus the prevailing NBBO since 2004. BOX believes that the proposed rule change will result in tighter and deeper markets, resulting in more liquidity on BOX.

Current PIP Allocation

At the conclusion of a PIP, the PIP Order is currently matched against the best prevailing quote(s) or order(s) on BOX (except any pre-PIP Broadcast proprietary quote or order from the Initiating Participant), in accordance with the priority algorithm described below, whether Improvement Order(s)[4] or Unrelated Order(s)[5] received by BOX, or Legging Orders[6] generated during the PIP (excluding Unrelated Orders that were immediately executed during the interval of the PIP). Such orders may include agency orders on behalf of Public Customers, Market Makers at away exchanges and non-BOX Options Participant broker-dealers, as well as non-PIP proprietary orders submitted by Options Participants.

The Exchange's Rules currently provide the following allocations for when the total quantity of orders, quotes, Improvement Orders, Legging Orders and the Primary Improvement Order is greater than the quantity of the PIP Order at a given price level:

Public Customer Allocation

All orders, other than Legging Orders and the Primary Improvement Order, for the account of Public Customers, whether Improvement Orders or Unrelated Orders, including quotes and orders on the BOX Book[7] prior to the PIP Broadcast, will be allocated for execution against the PIP Order first.[8] Where there are multiple such orders for the account of Public Customers at the same price, the trade allocation will be by time priority. If, at the end of the Public Customer allocation, there remains any unallocated quantity of the PIP Order, the balance will be allocated to the Primary Improvement Order allocation described below.

Primary Improvement Order Allocation

After the Public Customer allocation, the applicable trade allocation described below will be allocated to the Primary Improvement Order.[9] After Public Customer Orders have been satisfied, the Initiating Participant's Primary Improvement Order retains priority for up to 40% of the remaining size of the PIP Order when the Primary Improvement Order matches any competing Improvement Orders and/or non-Public Customers' Unrelated Orders at the final price level. If the Primary Improvement Order has designated a

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–76301 (October 29, 2015), 80 FR 68347 (November 4, 2016) (Order Approving SR–BX–2015–032). *See also* BX Rule BX Chapter VI, Sec. 9(ii)(E)(3).

[4] *See* BOX Rule 7150(f)(1).

[5] *See* BOX Rule 7150(a)(1).

[6] *See* BOX Rule 7240(c).

[7] *See* BOX Rule 100(a)(10).

[8] *See* BOX Rule 7150(g)(1).

[9] *See* BOX Rule 7150(g)(2).

PIP Surrender Quantity, the Primary Improvement Order allocation will be reduced, if necessary, in accordance with the PIP Surrender Quantity.[10] The balance will be allocated to the Market Maker allocation.

Market Maker Allocation

After the Primary Improvement Order allocation, any remaining unallocated quantity of the PIP Order will be allocated to orders and quotes, including Improvement Orders and quotes and orders on the BOX Book prior to the PIP Broadcast for the account of Market Makers. Where there are orders and quotes for the accounts of more than one Market Maker at the same price, the trade allocation for Market Makers will be pro-rata.[11]

Proposal

The Exchange proposes to establish the Quality Market Maker allocation after the Primary Improvement Order allocation and before the Market Maker allocation. As previously mentioned, the proposed rule change is based on, and substantially similar to, the rules of BX.[12] In the allocation following the Primary Improvement Order, Market Makers that were quoting at a price that is equal to the NBBO on the opposite side of the market from the PIP Order at the time of initiation of the PIP Auction ("Quality Market Makers"),[13] would have priority up to their quote size in the NBBO which was present when the PIP Auction was initiated ("QMM Eligibility Quantity") at each price level at or better than such NBBO when the PIP Auction was initiated after Public Customers have received allocations. Quality Market Maker quotes will be allocated pro-rata. Quality Market Maker status is only valid for the duration of the particular PIP auction. Further, Non-Quality Market Makers and Quality Market Maker interest which exceeded their size in the QMM Eligibility Quantity would have priority at each price level at or better than the NBBO when the PIP Auction was initiated after Public Customer, Initiating Participants and Quality Market Makers have received allocations. Non-Quality Market Maker and Quality Market Maker interest which exceeded their displayed size of the QMM Eligibility Quantity will be allocated pro-rata.

Example #1

A PIP Order to buy 200 contracts of options instrument A is received. Assume the NBBO is 2.00–2.10 and Market Maker 1 is at the NBBO to sell 10 contracts at the start of the PIP. The following responses are received:

Public Customer 1 to sell 20 at 2.08
Primary Improvement Order to sell 200 at 2.08
Market Maker 1 to sell 70 at 2.08
Market Maker 2 to sell 60 at 2.08

The PIP Order will be allocated in the following order:

Round 1: Public Customer Allocation
- 20 contracts at 2.08 to Public Customer 1

Round 2: Primary Improvement Order Allocation
- 72 contracts at 2.08 to the Primary Improvement Order (40% of the remaining quantity after Public Customer 1)

Round 3: Quality Market Maker Allocation
- 10 contracts at 2.08 to Market Maker 1 as a QMM (During the QMM allocation round, the QMM is capped at the size of their quote at the NBBO at the start of the PIP. The QMM's allocation is at a price better than the NBBO at the start of the PIP.)

Round 4: Market Maker Allocation
- 49 contracts at 2.08 to Market Maker 1 (Market Maker 1 is allocated during the Market Maker round any remaining quantity after the QMM allocation round)
- 49 contracts at 2.08 to Market Maker 2

Example #2

A PIP Order to buy 200 contracts of options instrument A is received. Assume the NBBO is 2.00–2.10 and Market Maker 1 is at the NBBO to sell 120 contracts at the start of the PIP. The following responses are received:

Public Customer 1 to sell 10 at 2.08
Primary Improvement Order to sell 200 at 2.08
Market Maker 1 to sell 80 at 2.08
Market Maker 2 to sell 60 at 2.08
Market Maker 3 to sell 60 at 2.08

The PIP Order will be allocated in the following order:

Round 1: Public Customer Allocation
- 10 contracts at 2.08 to Public Customer 1

Round 2: Primary Improvement Order Allocation
- 76 contracts at 2.08 to the Primary Improvement (40% of the remaining quantity after Public Customer 1)

Round 3: Quality Market Maker Allocation
- 80 contracts to Market Maker 1 at 2.08 as a QMM (Market Maker 1's quote at the NBBO at the start of the PIP exceeds their PIP response, therefore the allocation is capped at the size of their PIP response instead of the size of their quote at the NBBO at the start of the PIP. The QMM's allocation is at a price better than the NBBO at the start of the PIP.)

Round 4: Market Maker Allocation
- 17 contracts to Market Maker 2 at 2.08 and 17 contracts to Market Maker 3 at 2.08 (Market Makers 2 and 3 receive a pro-rata allocation of the remainder of the contracts because there is insufficient size to satisfy the full quantity of their responses)

Example #3

A PIP Order to sell 100 contracts of options instrument A is received. Assume the NBBO is 1.00—1.10 and Market Maker 1 is at the NBBO to buy 120 contracts at the start of the PIP. The following responses are received:

Primary Improvement Order to buy 100 at 1.02
Market Maker 1 to buy 100 at 1.02
Market Maker 2 to buy 80 at 1.02
Market Maker 3 to buy 20 at 1.02
Broker Dealer 1 to buy 50 at 1.02

The PIP Order will be allocated in the following order:

Round 1: Primary Improvement Order Allocation
- 40 contracts at 1.02 to the Primary Improvement Order (40% of the remaining quantity after Public Customer (none in this example))

Round 2: Quality Market Maker Allocation
- 60 contracts to Market Maker 1 at 1.02 as a QMM (Market Maker 1's quote at the NBBO at the start of the PIP exceeds their PIP response, therefore the eligible allocation is capped at the size of their PIP response instead of the size of their quote at the NBBO at the start of the PIP. The QMM's allocation is at a price better than the NBBO at the start of the PIP.)

Example #4—Multiple Market Makers quoting at the NBBO

A PIP Order to sell 250 contracts of options instrument A is received. Assume the NBBO is 1.00—1.10 and, at the start of the PIP, Market Maker 1 is at the NBBO to buy 100 contracts and Market Maker 2 is at the NBBO to buy

---

[10] *See* BOX Rule 7270(a)(3)(iii)(A).

[11] *See* BOX Rule 7150(g)(3).

[12] *See supra* note 3. The Exchange's proposal is based on BX's Priority Market Maker allocation round of their price improvement auction when size pro-rata is used for the auction's allocation method.

[13] The Exchange notes, as is the case with BX, the Exchange does not have non-displayed interest; therefore, there is no distinction in the proposed rule regarding the displayed NBBO versus non-displayed.

100 contracts. The following responses are received:

Public Customer 1 to buy 40 at 1.02
Primary Improvement Order to buy 250 at 1.02
Market Maker 1 to buy 80 at 1.02
Market Maker 2 to buy 80 at 1.02
Market Maker 3 to buy 50 at 1.02
Broker Dealer 1 to buy 10 at 1.02

The PIP Order will be allocated in the following order:

Round 1: Public Customer Allocation

- 40 contracts at 1.02 to Public Customer 1

Round 2: Primary Improvement Order Allocation

- 84 contracts at 1.02 to the Primary Improvement Order (40% of the remaining quantity after Public Customer 1)

Round 3: Quality Market Maker Allocation

- 63 contracts at 1.02 to Market Maker 1 as a QMM and 63 contracts at 1.02 to Market Maker 2 as a QMM (Market Maker 1 and 2 are allocated pro-rata since both had quotes at the NBBO at that start of the PIP and both responded to the PIP. Their eligible allocation is capped at the size of their response to the PIP because their quote at the NBBO at the start of the PIP exceeded their responses. The QMM's allocation is at a price better than the NBBO at the start of the PIP.)

Note—when there are multiple QMMs, allocation in the QMM round will be determined based on pro-rata using the size of the QMMs quote at the NBBO at the start of the auction.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed Quality Market Maker allocation may encourage Market Makers to quote at the NBBO with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BOX. Specifically, by offering BOX Market Makers the ability to receive priority in the proposed allocation during the PIP auction, a BOX Market Maker may be encouraged to quote outside of the PIP auction at the their best and most aggressive prices with additional size. BOX believes that this incentive may result in a narrowing of quotes and thus further enhance BOX's overall market quality. Within the PIP auction, BOX believes that the proposed allocation may encourage BOX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process. Additionally, the Exchange believes that providing the Quality Market Maker allocation at price levels better than the NBBO at the start of the PIP will incentivize quoting on BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard, and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by BX that was recently approved by the Commission.[16]

The Exchange does not believe that providing BOX Market Makers with an opportunity to receive priority allocation will create an undue burden on intra-market competition. BOX Market Makers have obligations to the market unlike other market participants.[17] The allocation seeks to reward BOX Market Makers with an opportunity to receive additional allocations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–25, and should be submitted on or before July 22, 2016.

---

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra*, note 3.

[17] *See* BOX Rule 8040.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15711 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78172; File No. SR–BOX–2016–24]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7260 by Extending the Penny Pilot Program Through December 31, 2016

June 28, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7260 by extending the Penny Pilot Program through December 31, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on June 30, 2016, until December 31, 2016.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for PowerShares QQQ Trust ("QQQQ")®, SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), will continue to be $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY, and IWM will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace, on a semi-annual basis, any Pilot Program classes that have been delisted on the second trading day following July 1, 2016. The Exchange notes that the replacement classes will be selected based on trading activity for the six month period beginning December 1, 2015 and ending May 31, 2016 for the July 2016 replacements. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot until December 31, 2016 and changes the dates for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2016, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

---

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. *See* Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR–BOX–2012–021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR–BOX–2013–31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR–BOX–2013–56), 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR–BOX–2014–17), 73822 (December 11, 2014), 79 FR 75606 (December 18, 2014) (SR–BOX–2014–29), and 75295 (June 25, 2015), 80 FR 37690 (July 1, 2015) (SR–BOX–2015–23). The extension of the effective date and the revision of the date to replace issues that have been delisted are the only changes to the Penny Pilot Program being proposed at this time.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[10] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–24 and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15712 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[10] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 3.

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78157; File No. SR–NYSEArca–2016–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio

June 27, 2016.

On May 3, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Change the index underlying the PowerShares Build America Bond Portfolio (“Fund”); (2) change the name of the Fund as a result of the proposed change to the underlying index; and (3) permit the continued listing and trading of shares of the Fund as a result of the change to the underlying index. The proposed rule change was published for comment in the **Federal Register** on May 23, 2016.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 7, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 19, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2016–62).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15579 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77849 (May 17, 2016), 81 FR 32371.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78175; File No. SR–NASDAQ–2016–088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Fees for Certain Real Estate Investment Trusts Listed on Nasdaq

June 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the fees for certain Real Estate Investment Trusts (“REITs”) listed on Nasdaq.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

IM–5910–1. All-Inclusive Annual Listing Fee

(a)–(c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares $45,000
10+ to 50 million shares $55,000
50+ to 75 million shares $75,000
75+ to 100 million shares $100,000
100+ to 125 million shares $125,000
125+ to 150 million shares $135,000
Over 150 million shares $155,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Global Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed $155,000. For purposes of this rule, a “REIT Family” means three or more REITs that are provided management services by the same entity or by entities under common control.

(2)–(3) No change.

(e) No change.

* * * * *

IM–5920–1. All-Inclusive Annual Listing Fee

(a)–(c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares $42,000
10+ to 50 million shares $55,000
Over 50 million shares $75,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Capital Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed $75,000. For purposes of this rule, a “REIT Family” means three or more REITs that are provided management services by the same entity or by entities under common control.

(2)–(3) No change.

(e) No change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to allow three or more REITs that are provided management services by the same entity or by entities under common control (a "REIT Family") to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq, thus lowering the fees paid by the REIT Family.[3]

Some publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. In such cases, the REIT itself does not have any employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees. In a limited number of cases, a single entity or affiliated entities externally manage three or more REITs, thus forming a REIT Family.

As an incentive for all of the REITs in such a group to list on Nasdaq, Nasdaq proposes to allow three or more REITs under common management to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq.[4] Nasdaq believes that this will be attractive to management companies that externally manage multiple REITs as it will reduce the REITs' expenses and, therefore, increase the REITs' earnings available to shareholders.

Nasdaq already allows the sponsor of a family of closed-end funds to aggregate the funds' shares outstanding in a similar manner.[5] REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and REITs are therefore extremely fee sensitive.

The Exchange expects that the proposed fee change will incentivize external managers to encourage the boards of their managed REITs to avail themselves of the potential reduction in the annual fee and that it will therefore motivate eligible REITs to remain listed on Nasdaq or to transfer their listing to the Nasdaq.

The proposed REIT fee structure would apply to both the Nasdaq Global Market and the Nasdaq Capital Market.[6] REITs listed on the Nasdaq Global Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Global Market.

Similarly, REITs listed on the Nasdaq Capital Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Capital Market.

The proposed amendment will affect only the All-Inclusive Annual Listing Fee schedule. In 2014, Nasdaq adopted a new All-Inclusive Annual Listing Fee schedule and this new fee structure currently applies to all newly listing companies and will become operative for all listed companies in 2018.[7] On June 10, 2016, Nasdaq filed a proposed rule change with the Commission to allow currently listed companies that are not on the All-Inclusive Annual Listing Fee schedule to opt-in for 2017.[8] This will allow any currently listed REIT Family that would like to take advantage of this fee change to do so for their next annual fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

Nasdaq believes that the proposed fee change allowing a REIT Family to aggregate shares, and pay a lower fee, is reasonable and not unfairly discriminatory because there is a reasonable justification for charging a REIT Family different fees from those charged to other issuers of equity securities.

In particular, REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and are therefore extremely fee sensitive. For these reasons, it is not unfairly discriminatory to afford a REIT Family a similar fee benefit as afforded to a family of closed-end funds, even if such treatment differs from the treatment of operating companies.

In addition, Nasdaq notes that a substantial portion of the regulatory cost it incurs in connection with the continued listing of an issuer relates to the review by Nasdaq staff of the issuer's compliance with Nasdaq's corporate governance requirements. Because the REITs in a REIT Family are provided management services by the same entity or by entities under common control, established rapport between REIT managers and Nasdaq staff allows Nasdaq to more efficiently monitor all members of a REIT Family.

Nasdaq believes that allowing aggregation of shares outstanding for three or more REITs, rather than two or more REITs, managed by the same entity or entities under common control is not unfairly discriminatory. First, the benefits to Nasdaq described above are more pronounced when there are three or more REITs in the family. In addition, if aggregation is allowed for two REITs, it would lead to additional loss of revenue to Nasdaq. Finally, the proposed fee change is a competitive response to the discount allowed by NYSE, which is also available only to families of three or more REITs.[11]

---

[3] REITs currently pay the same annual fees that apply to other equity securities.

[4] For example, three REITs in a REIT Family, each having 55 million total shares outstanding, listed on the Nasdaq Global Market, would be charged $75,000 each under the current All-Inclusive Annual Listing Fee schedule for a total of $225,000. Under the proposed rule such REITs would be charged $155,000 in total, as one entity with 165 million total shares outstanding.

[5] *See* Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR–NASD–2005–96).

[6] Listing Rule 5910 provides that fee schedules for the Nasdaq Global Select Market are the same as fee schedules for the Nasdaq Global Market.

[7] Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR–NASDAQ–2014–87).

[8] SR–NASDAQ–2016–085.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] In 2007, the New York Stock Exchange ("NYSE") adopted a rule that provides for a

Nasdaq also notes that no other company will be required to pay higher fees as a result of the proposed amendments. Therefore, Nasdaq believes that allowing a REIT Family to aggregate the shares outstanding of all REITs that are part of the REIT Family is reasonable and not inequitable or unfairly discriminatory.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act[12] in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

Specifically, the amount of revenue forgone by allowing REIT Families to aggregate shares outstanding when calculating fees is not substantial, and the reduced fees may result in more REITs listing on Nasdaq, thereby increasing the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

Consequently, Nasdaq believes that the potential loss of revenue from the aggregation of shares outstanding in a REIT Family, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees.[13] For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that REITs have an incentive to list on the Exchange sooner, which additional time the Exchange states will help to prevent potential disruptions to listing REITs that are part of a REIT Family and thereby enhance competition. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest for the same reasons stated by the Exchange.[17] The Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–088 and should be submitted on or before July 22, 2016.

---

discount in annual fees for three or more REITs sharing a common external manager. Securities Exchange Act Release No. 57061 (December 28, 2007), 73 FR 0902 (January 4, 2008) (SR–NYSE–2007–113). In an order approving the NYSE's discount the Commission found that "it is reasonable for the Exchange to balance its need to remain competitive, while at the same time ensuring adequate revenue to meet is regulatory responsibilities." The Commission further found that the NYSE's proposed discount "does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act." *See* Securities Exchange Act Release No. 57291 (February 7, 2008), 73 FR 8387 (February 13, 2008) (approving SR–NYSE–2007–113).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* footnote 11 above.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15714 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78165; File No. SR–BatsBYX–2016–14]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.22(i) Identifying Certain Transactions as the Bats One Opening Price or the Bats One Closing Price

June 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the content of the Bats One Feed under Rule 11.22(i) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price."

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the content of the Bats One Feed under Rule 11.22(i) to identify certain transactions as the "Bats One Opening Price" or the "Bats One Closing Price." The last sale information described below that the Exchange proposes to identify as the Bats One Opening or Closing Price is currently included in the Bats One Feed. The Exchange notes that it is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BYX and its affiliated exchanges[3] and for which the Bats Exchanges report quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.[4]

The last sale information disseminated as part of the Bats One Feed includes the price, size, time of execution, and individual Bats Exchange on which the trade was executed. The last sale information also includes the cumulative number of shares executed on all Bats Exchanges for that trading day.[5]

The Exchange now proposes to identify certain last sale transactions as the Bats One Opening Price or the Bats One Closing Price. For securities listed on BZX,[6] the Bats One Opening Price would be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5)[7] and the Bats One Closing Price would be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3).[8] For securities not listed on BZX, the Bats One Opening Price would be the first last sale eligible trade[9] that occurred on a Bats Exchange after 9:30 a.m. Eastern Time. That first trade would be identified as the Bats One Opening Price when disseminated via the Bats One Feed. The Bats One Closing Price for non-BZX listed securities would be the final last sale eligible trade to occur on a Bats Exchange prior to 4:00 p.m. Eastern Time. The Bats One Closing Price would be disseminated via the Bats One Feed after 4:00 p.m. Eastern Time. The Exchange would not disseminate a Bats One Opening or Closing Price for a particular trading day when a trade satisfying the above criteria does not occur.

In addition, the Bats One Opening and Closing Price for BZX listed securities are included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. Also, the Bats One Opening and Closing Prices for non-BZX listed securities is derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] BYX's affiliated exchanges are the Bats BZX Exchange, Inc. ("BZX"), Bats EDGA Exchange, Inc. ("EDGA"), and Bats EDGX Exchange, Inc. ("EDGX", together with EDGA, BZX, and BYX, the "Bats Exchanges").

[4] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[5] The Bats One Feed also contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels for all securities that are traded on the Bats Exchanges in addition to the Bats One Summary Feed ("Bats One Premium Feed"). For each price level on one of the Bats Exchanges, the Bats One Premium Feed includes a two-sided quote and the number of shares available to buy and sell at that particular price level.

[6] A BZX listed security is a security listed on the BZX pursuant to Chapter 14 of BZX's Rules.

[7] The term "BZX Official Opening Price" is the price disseminated to the consolidated tape as the market center opening trade. *See* BZX Rule 11.23(a)(5). In the event that there is no opening auction for a BZX listed security, the BZX Official Opening Price will be the price of the final last sale eligible trade, which will be the previous BZX Official Closing Price. *See* BZX Rule 11.23(b)(2)(B).

[8] The term "BZX Official Closing Price" is the price disseminated to the consolidated tape as the market center closing trade. *See* BZX Rule 11.23(a)(3). In the event that there is no closing auction for a BZX listed security, the BZX Official Closing Price will be the price of the final last sale eligible trade. *See* BZX Rule 11.23(c)(2)(B).

[9] A last sale eligible trade must be of at least one round lot. A round lot consists of one hundred (100) shares. *See* Exchange Rule 11.10.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[12] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the market data provider industry.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying certain transactions as the Bats One Opening or Closing Price to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information.

Lastly, the proposal would not permit unfair discrimination because the information will be available to all investors and market data vendors on an equivalent basis. In addition, any investor that wishes to receive such information via a different source will be able to do so. As noted above, the Exchange is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. Specifically, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities are currently provided and disseminated via the consolidated tape[14] and included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. In addition, investors can also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as prices of the first and final last sale eligible transaction to occur during Regular Trading Hours[15] are posted to the consolidated tape. Also, the Bats One Opening and Closing Prices for non-BZX listed securities are derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposal will impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act. A vendor seeking to offer a similar product by identifying certain transaction as an opening or closing price would be able to do so on the same terms as the Exchange. As discussed in in [sic] the Bats One Approval Order,[16] any entity may separately purchase the individual underlying products, and if they so choose, perform an aggregation and consolidation function similar to that which the Exchange performs in creating the Bats One Feed. Any entity may offer a data feed with the same information included in the Bats One Feed to sell and distribute it to its clients with no greater cost than the Exchange. Likewise, a competing vendor could independently identify certain transaction as an opening or closing price and include such information as part of their product to be disseminated to their customers. As discussed above, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities is currently provided to and disseminated via the consolidated tape.[17] A competing market data vendor could also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as such prices are the first and final last sale eligible transaction to occur during Regular Trading Hours. Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

---

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

[14] *See* BZX Rule 11.23(a)(3) and (5).

[15] Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Exchange Rule 1.5(w).

[16] *See* Bats One Approval Order, *supra* note 4.

[17] *See* BZX Rule 11.23(a)(3) and (5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–14 and should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15583 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78174; File No. SR–NYSEArca–2016–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Exchange Rule 6.72 in Order To Extend the Penny Pilot Through December 31, 2016

June 28, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 17, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Exchange Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2016. The Pilot Program is currently scheduled to expire on June 30, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Exchange Rule 6.72 to extend the time period of the Pilot Program,[4] which is currently scheduled to expire on June 30, 2016, through December 31, 2016. The Exchange also proposes that the dates to replace issues in the Pilot Program that have been delisted be revised to the second trading day following July 1, 2016.[5]

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on June 30, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

---

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 75280 (June 24, 2015), 80 FR 37331 (June 30, 2015) (SR–NYSEArca–2015–51).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–88 and should be submitted on or before July 22, 2016.

---

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15713 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P

---

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.13 percent for the July–September quarter of FY 2016.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

John M. Wade,

Acting Director, Office of Financial Assistance.

[FR Doc. 2016–15686 Filed 6–30–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 9620]

E.O. 13224 Designation of al-Qa'ida in the Indian Subcontinent, Also Known as al-Qaeda in the Indian Subcontinent, Also Known as Qaedat al-Jihad in the Indian Subcontinent as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as al-Qa'ida in the Indian Subcontinet, also known as al-Qaeda in the Indian Subcontinent, also known as Qaedat al-Jihad in the Indian Subcontinent committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: June 10, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–15683 Filed 6–30–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9621]

Foreign Terrorist Organization Designation of al-Qa'ida in the Indian Subcontinent, Also Known as al-Qaeda in the Indian Subcontinent, Also Known as Qaedat al-Jihad in the Indian Subcontinent as a Specially Designated Global Terrorist

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA") (8 U.S.C. 1189), exist with respect to al-Qa'ida in the Indian Subcontinent, also known as al-Qaeda in the Indian Subcontinent, also known as Qaedat al-Jihad in the Indian Subcontinent.

Therefore, I hereby designate the aforementioned organization and its aliases as a foreign terrorist organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: June 10, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–15680 Filed 6–30–16; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1241; Docket No. FD 36040][1]

Newvista Property Holdings, LLC—Adverse Abandonment of the Ironton Branch—In Utah County, Utah; Newvista Property Holdings, LLC—Petition For Declaratory Order

By petition filed on March 7, 2016, NewVista Property Holdings, LLC (NewVista), seeks waivers of certain Board regulations and exemptions from certain statutory provisions in connection with an adverse, or third-party, application for abandonment it plans to file under 49 U.S.C. 10903. NewVista's petition concerns approximately 1.87 miles of railroad owned by Union Pacific Railroad Company (UP) known as the Ironton Branch. NewVista states that it owns, or controls, nearly all of the industrial property that abuts the Ironton Branch.

On March 28, 2016, UP filed a reply to NewVista's petition, arguing that the petition should be rejected or denied because the Ironton Branch is excepted track under 49 U.S.C. 10906, and thus falls outside the Board's abandonment authority.

On April 7, 2016, NewVista filed a reply to UP's reply (the Surreply). In its Surreply, NewVista requests: (1) Guidance regarding the appropriate procedures to obtain a ruling on whether the Ironton Branch has been removed from the Board's jurisdiction; (2) a declaratory order that the Board "has authority to adversely abandon the

---

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

Ironton Branch" or that the Ironton Branch is no longer part of the national rail system and that the Board has no jurisdiction over the Ironton Branch. Additionally, "[i]f the Ironton Branch has been taken outside the authority of the STB because an abandonment already has been consummated, [NewVista] requests a declaratory order so stating."

The history and status of the Ironton Branch is well documented. The Interstate Commerce Commission (ICC) authorized UP's request to abandon the Ironton Branch in 1977. *L.A. & Salt Lake R.R.—Aban.—Portion of the Ironton Branch in Utah Cty., Utah,* AB 85 (Sub-No. 3) (ICC served Oct. 6, 1977). Subsequently, UP filed a notice with the ICC on December 30, 1977, clarifying that track between Mileposts 0.64 and 0.71 was "retired and removed," and that track between Mileposts 0.00 and 0.64, and between Mileposts 0.71 and 1.87, was to be retained and reclassified as yard track. The Board confirmed the status of those portions of the Ironton Branch as yard track in *Joseph R. Fox—Petition for Declaratory Order,* FD 35161 (STB served May 18, 2009), *aff'd Fox* v. *STB,* 379 Fed. Appx. 767 (10th Cir. 2010). In that decision, the Board also confirmed that industrial yard track, while excepted under 49 U.S.C. 10906 from the need to obtain Board authority for construction, abandonment, or operation, is nevertheless subject to the Board's jurisdiction and is not subject to state or local regulation.

Because yard track is not subject to the Board's § 10903 abandonment authority, the Board recently explained that yard track is likewise excepted from the Board's adverse abandonment process. Instead, the proper vehicle for removing the Board's jurisdiction over yard track is through a declaratory order proceeding. *Pinelawn Cemetery—Pet. for Declaratory Order,* FD 35468, slip op. at 11 n.31 (STB served Apr. 21, 2015). Because the portion of the Ironton Branch remaining under Board jurisdiction is yard track, an adverse abandonment is not appropriate here. Therefore, the Board will deny NewVista's petition for waiver and will close the abandonment proceeding.

However, NewVista's Surreply contains a request for a declaratory order in the alternative. The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, a controversy exists as to whether the yard track has been or can be removed from the Board's jurisdiction. The Board will therefore institute a declaratory order proceeding.

It is ordered:

1. NewVista's petition for waiver in Docket No. AB 1241 is denied.
2. Docket No. AB 1241 is closed.
3. A declaratory order proceeding is instituted in Docket No. FD 36040. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.
4. NewVista's Opening Statement is due August 23, 2016.
5. Replies are due September 12, 2016.
6. NewVista's rebuttal is due September 22, 2016.
7. Notice of the Board's action will be published in the **Federal Register**.
8. The decision is effective on the date of service.

Decided: June 23, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Rena Laws-Byrum,

Clearance Clerk.

[FR Doc. 2016–15652 Filed 6–30–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Information Collection; Request for Comments

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit Program Certified Development Entity CDE Certification Application.

DATES: Written comments must be received on or before August 30, 2016 to be assured of consideration.

ADDRESSES: Submit your comments via email to David Meyer, David Meyer, Certification, Compliance Monitoring and Evaluation (CCME) Program Manager, CDFI Fund, at *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: David Meyer, CCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220 or by facsimile to (202) 653–0375 (not a toll free number). Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit Program Certified Development Entity CDE Certification Application.

OMB Number: 1559–0014.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted in the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC 45D and created the NMTC Program. The Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years, expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits through the NMTC Program, an entity must be certified as a qualified Community Development Entity (CDE) and submit an allocation application to the CDFI Fund. Nonprofit entities and for-profit entities may be certified as CDEs by the CDFI Fund. In order to be certified as a CDE, an entity must be a domestic corporation or partnership, that: (1) Has a primary mission of serving or providing investment capital for low-income communities or low-income persons; and (2) maintains accountability to residents of low-income communities through their representation on any governing or advisory board of the entity.

Current Actions: Renewal of Existing Information Collection.

Type of Review: Regular Review.

Affected Public: CDEs and entities seeking CDE certification, including business or other for-profit institutions, nonprofit entities, and State, local and Tribal entities.

Estimated Number of Respondents: 300.

Estimated Annual Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 1,200 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://*

www.cdfifund.gov. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–15719 Filed 6–30–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 27, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0196.

Type of Review: Revision of a currently approved collection.

Title: Split-Interest Trust Information Return.

Form: Form 5227.

Abstract: The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.

Estimated Total Annual Burden Hours: 33,138,550.

OMB Control Number: 1545–0219.

Type of Review: Revision of a currently approved collection.

Title: Work Opportunity Credit.

Form: Form 5884.

Abstract: IRC section 38(b) (2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Estimated Total Annual Burden Hours: 69,400.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–15577 Filed 6–30–16; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 127 July 1, 2016

Part II

Department of the Interior

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206
Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

[Docket No. ONRR–2012–0004; DS63644000 DR2PS0000.CH7000 167D0102R2]

RIN 1012–AA13

Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Final rule.

SUMMARY: ONRR is amending our regulations governing valuation, for royalty purposes, of oil and gas produced from Federal onshore and offshore leases and coal produced from Federal and Indian leases. This rule also consolidates definitions for oil, gas, and coal product valuation into one subpart that is applicable to the Federal oil and gas and Federal and Indian coal subparts.

DATES: *Effective date:* January 1, 2017.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Amy Lunt at (303) 231–3746, Lisa Dawson at (303) 231–3653, Karl Wunderlich at (303) 231–3663, Chris Carey at (303) 231–3460, Megan Hessee at (303) 231–3713, Richard Adamski at (202) 513–0598, or Carrie Wallace at (303) 445–0638.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of implementing this final rule regarding the valuation of oil and gas production from Federal leases and coal production from Federal and Indian leases is (1) to offer greater simplicity, certainty, clarity, and consistency in product valuation for mineral lessees and mineral revenue recipients; (2) to ensure that Indian mineral lessors receive the maximum revenues from coal resources on their land, consistent with the Secretary's trust responsibility and lease terms; (3) to decrease industry's cost of compliance and ONRR's cost to ensure industry compliance; and (4) to provide early certainty to industry and to ONRR that companies have paid every dollar due.

Also, this final rule makes non-substantive technical or clarifying changes to the proposed rule. We re-wrote sections of the regulations in Plain Language to meet the criteria of Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, and to make our rules more clear, consistent, and readable.

II. Comments on Proposed Rule

On January 6, 2015, ONRR published a Proposed Rule to amend the valuation regulations for oil, gas, and coal produced from Federal leases and coal produced from Indian leases (80 FR 608). The proposed rule took into consideration input that we received on the Advance Notices of Proposed Rulemaking, which we published on May 27, 2011, regarding the valuation of oil, gas, and coal produced from Federal leases and coal produced from Indian leases (76 FR 30878, 30881). ONRR also considered input that we received during six public workshops that we held in September and October of 2011. The proposed rulemaking provided for a 60-day comment period, which closed on March 9, 2015. In response to over 50 stakeholder requests to extend the public comment period, we published a notice that granted a 60-day extension, which extended the comment period to May 8, 2015 (80 FR 7994). During the public comment period, we received more than 1,000 pages of written comments from over 300 commenters and over 190,000 petition signatories. We received comments from industry, industry trade groups, Congress, State governors, States, local municipalities, two Tribes, local businesses, public interest groups, and individual commenters. The petition signatories' main focus was on coal, and they aligned themselves with organizations that were either passionately against the further expansion of mining coal or were proponents of coal mining.

We carefully considered all of the public comments that we received during the rulemaking process and, in some instances, revised the language of the final rule based on these comments. We hereby adopt final regulations governing the valuation of oil, natural gas, and coal produced from Federal leases and coal produced from Indian leases. These regulations apply, prospectively, to oil, natural gas, and coal produced on or after the effective date that we have specified in the **DATES** section of this preamble.

General Comments

Because this final rule is composed of four subparts covering Federal oil and gas and Federal and Indian coal, we will organize, analyze, and respond to the comments regarding the specific subparts.

Public Comment: All of the over 190,000 petition signatories that ONRR received during the public comment period pertained to coal. The comments and positions on coal production and values were polarized representing those supporting the coal industry and those supporting the platform highlighting green energy and coal's harm to the environment. The overwhelming majority of the signed petitions were from individuals asserting that coal production should cease and stay in the ground or that ONRR's proposed changes to coal valuation do not go far enough toward closing the perceived loopholes that the coal industry is exploiting. Many commenters who work in the coal industry or live in coal mining-dependent communities, along with one Tribe, maintain that the proposed rule goes too far. They argue that the rule imposes unwarranted valuation methods, including the "default provision," which, they contend, hinders transparency and creates complex and subjective coal valuations. They claim that the wholesale changes to the rule would cause irreparable economic harm to the coal industry by negatively disrupting the coal market.

ONRR Response: We appreciate the comments on both sides of the issue. The comments regarding keeping coal in the ground or regarding coal's negative impact on the socioeconomic health of communities by discouraging production, however, are beyond the scope of this rulemaking, which is limited to the valuation of coal produced from Federal and Indian leases for royalty collection purposes. We will, however, respond to the specific comments that suggested more stringent alternative valuation methods in the section-by-section analysis part of the preamble. As a general matter, many commenters have concerns about how the Federal Government leases coal, the amount of royalty charged, and whether taxpayers are getting a fair return from public resources. While this rule takes steps toward ensuring that the valuation process for Federal and Indian coal resources better reflects the changing energy industry while protecting taxpayers and Indian assets, its scope is not broad enough to address the many concerns the commenters raised. For that and other reasons, the U.S. Department of the Interior (Department) recently launched a comprehensive review to identify and evaluate potential reforms to the Ffederal coal program in order to ensure that it is properly structured to provide a fair return to taxpayers and reflect its impacts on the environment, while continuing to help meet our energy needs.

ONRR request for comments: In the proposed rule, we solicited comments on how to simplify and improve the valuation of coal disposed of in non-arm's-length transactions and no-sale situations. We sought input on the merits of eliminating the benchmarks for valuation of non-arm's-length sales and comments on the following questions:

- Should the royalty value of coal initially sold under non-arm's-length conditions be based on the gross proceeds received from the first arm's-length sale of that coal in situations where there is a subsequent arm's-length sale?
- If you are a coal lessee, will adoption of this methodology substantively impact your current calculation and payment of royalties on coal, and how?
- What other methods might ONRR use to determine the royalty value of coal not sold at arm's-length that we may not have considered?

Public Comment: ONRR received only one response from an industry commenter addressing these questions. The commenter answered no to the first question and explained that valuing coal further away from the lease may not represent the true value of the coal at the lease. The commenter also added that the seller may not know who the first arm's-length purchaser may be. In response to the second question, the commenter believes that any subsequent transaction to an affiliate is not applicable to the marketability of the coal at the lease and that ONRR may or may not get a reasonable price for the valuation of the coal. The commenter responded to ONRR's third question seeking other methods by stating that ONRR should retain the benchmarks. The commenter further elaborated that the benchmarks should be reordered to 1, 4, 2, 3, and 5, plus adding a sixth benchmark (review of actual cost of production and assess a return on investment that is fair to the situation and/or the company under assessment), applicable only in those rare instances when no arm's-length sales are available.

ONRR also received several comments suggesting the option to base the value of coal on an index price.

ONRR Response: The best indication of value is the gross proceeds received under an arm's-length contract between independent persons who are not affiliates and who have opposing economic interests regarding that contract. The best indicator of value under a non-arm's-length sale is the gross proceeds accruing to the lessee or its affiliate under the first arm's-length contract, less applicable allowances. In this final rule, we eliminated the benchmarks for both natural gas and coal. We implemented this method for Federal oil in 2000 and, in this final regulation, made it consistent for Federal gas and Federal and Indian coal.

ONRR is not currently aware of any published index prices for coal that cover a wide array of coal production that are both transparent and widely traded so as to yield a reasonable value that would represent the true market value of coal. We will monitor the coal market and may be open to considering index prices as a valuation option, if viable.

Public Comment: ONRR received a few general comments concerning Federal oil and natural gas production. These comments fell into several categories, including natural gas measurement methods, ONRR's unbundling program, and the economic impact on the oil and gas industry.

ONRR also received general comments concerning Federal and Indian coal production. These comments fell into several categories, including the final rule's impact on coal production and the coal industry, royalty rates, and creating more transparency to the public for coal valuation.

ONRR Response: Some of these comments were beyond the scope of the rule so ONRR did not address them specifically. We addressed other comments in the specific comment sections.

Regarding the comments on coal royalty rates, the royalty rate is a lease clause and is not a component of this final rule. Royalty rates are a part of lease negotiations, which the Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), and Bureau of Indian Affairs (BIA) on behalf of the Tribes and individual Indian mineral owners conduct. The final rule does not limit or otherwise infringe on the authority of these entities to negotiate those leases. Instead, this rule is focused on ensuring that Federal and Indian mineral owners receive the royalties that are owed to them based on the value of the resources being sold and consistent with the royalty terms of the applicable leases negotiated by the BLM, BOEM and BIA.

As to comments related to increasing transparency, the U.S. Department of the Interior (Department) created a data portal as part of the Extractive Industries Transparency Initiative—a global, voluntary partnership to strengthen the accountability of natural resource revenue reporting and build public trust for the governance of these vital activities. You can access the data portal at *https://useiti.doi.gov.*

A. Specific Comments on 30 CFR Part 1206—Product Valuation, Subpart A—General Provisions and Definitions

1. Definitions (§ 1206.20)

In this final rule, ONRR consolidated the definitions from Federal oil (§ 1206.101), Federal gas (§ 1206.151), Federal coal (§ 1206.251), and Indian coal (§ 1206.451). ONRR consolidated the existing definitions for these products to provide greater clarity and to eliminate redundancy. ONRR received comments on some of the modified definitions, which we discuss below.

Area: See discussion in this preamble under § 1206.105 regarding the definition of the term "area."

Coal Cooperatives: ONRR added a new definition of the term "*coal cooperatives*" that defines formal or informal organizations of companies or other entities sharing in a common interest to produce and market coal or coal-based products, the latter generally being electricity.

Public Comment: One commenter argued that defining a coal cooperative was unnecessary. The commenter suggested that contracts are either arm's-length or non-arm's-length and that it does not matter if affiliated parties are part of a corporation or an ONRR-defined cooperative.

ONRR Response: We seek a clear, consistent, and repeatable standard for valuing coal at its true market value. Coal cooperatives are formal or informal organizations of companies or other entities sharing in a common interest to produce and market coal or coal-based products, the latter generally being electricity. The services and benefits that coal cooperatives provide include, but are not limited to, manufacturing, selling, sampling, storing, supplying, permitting, transporting, marketing, or other logistic services. The relationship between a coal cooperative's members is not one of "opposing economic interests" and, therefore, is not at arm's-length.

If none of the members own 10 percent or more of the coal cooperative, the coal cooperative will not be an affiliate under the definitions in this rule found in § 1206.20. Nevertheless, the relationship between the coal cooperative and its members, as well as between the coal cooperative's members, is not at arm's-length for valuation purposes because they lack opposing economic interests. Therefore, the lessee must base the value of its coal production on the first arm's-length sale price received for the coal or electricity. We retained the term "*coal cooperative,*" but, in light of the comment that we received, we changed the proposed definition.

Gathering: In this final rule, any movement of bulk production from the wellhead to a platform offshore is gathering and not transportation. ONRR changed the definition of the term "*gathering*" and added paragraph (a)(1)(ii) in §§ 1206.110 and 1206.152 to rescind the May 20, 1999, "Guidance for Determining Transportation Allowances for Production from Leases in Water Depths Greater Than 200 Meters" (Deep Water Policy). The Deep Water Policy allowed lessees to deduct certain costs associated with moving bulk production from the seafloor to the first platform.

Public Comment: ONRR received several comments from industry and industry trade groups opposing our proposal to rescind the Deep Water Policy. Generally, the commenters opposed the categorical exclusion of subsea movement costs prior to the first platform as a transportation allowance. The commenters argued that such a determination was arbitrary and capricious. The commenters stated that rescinding the Deep Water Policy penalizes the development of innovative technologies that minimize surface facilities, reduce environmental risks, and increase ultimate recovery. Commenters stated that ONRR previously identified the movement of bulk production to the first platform as a valid transportation deduction and argue that we are now failing to provide sufficient justification to warrant rescinding the Deep Water Policy.

ONRR received comments from public interest groups and a State supporting the removal of the Deep Water Policy. These commenters argued that the Deep Water Policy was inconsistent with ONRR's definition of gathering, and rescinding the policy will cure improper deductions of subsea gathering costs. In addition, the commenters believe that the proposed change will assure a fair market value for production while also reducing administrative costs for the oil and gas industry.

ONRR Response: The former Minerals Management Service intended for the Deep Water Policy to incentivize deep water leasing by allowing lessees to deduct broader transportation costs than the regulations allowed. ONRR concluded that the Deep Water Policy has served its purpose and is no longer necessary. The regulations still allow offshore lessees to deduct considerable transportation costs to move oil and gas from the offshore platform to onshore markets. Rescinding this policy clarifies the meaning of gathering, which, in turn, provides a more consistent and reliable application of the regulations.

Public Comment: ONRR received comments stating it understated the cost estimate of the impact to industry from removing the Deep Water Policy. The commenters claim the cost of removing the Deep Water Policy is much higher than ONRR's estimated $17.4 to $23.6 million total annual loss to all of industry.

ONRR Response: ONRR does not agree. ONRR estimated the costs to industry using actual costs industry provided to ONRR during audits of the subsea gathering pipelines. ONRR used this data to estimate a per mile cost for subsea gathering pipelines. ONRR then used this per mile cost to calculate the total burden on industry associated with eliminating the Deep Water Policy. ONRR stands by its analysis.

Misconduct: ONRR added a new definition for the term "*misconduct.*" This new definition will apply to—and in conjunction with the—default provision. Misconduct, in this subpart, is different than—and in addition to—any violations subject to civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1719, and its implementing regulations in 30 CFR part 1241. Behavior that constitutes misconduct under part 1206 does not need to be willful, knowing, voluntary, or intentional. This is a valuation mechanism, not an enforcement tool.

Public Comment: Industry claims that the definition of misconduct is overly broad and argues that any common understanding of misconduct implies an element of intentional wrongdoing. Industry fears that ONRR may expand the use of the term to include even minor occurrences, such as simple reporting errors.

ONRR Response: According to *Black's Law Dictionary,* the term "*misconduct*" is "any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior, regardless of the mental state of the lessee or any individual employed by, or associated with, the lessee." Consistent with this definition, this final rule does not require behavior to be willful, knowing, voluntary, or intentional to constitute misconduct. We only intend to use this definition of the term "*misconduct*" for valuation purposes, not for imposing penalties. Thus, no intent is required. Moreover, FOGRMA does not mandate a particular mental state for a lessee's obligation to correctly report, account for, and pay royalties for purposes of royalty valuation. For example, under this final rule, if we determine that you improperly calculated the value of your gas due to misconduct, we will calculate the value of your gas under § 1206.144. However, if we determine that the misconduct was knowing or willful, we may pursue civil penalties under 30 CFR part 1241.

B. Specific Comments on 30 CFR Part 1206—Product Valuation, Subpart C—Federal Oil

1. Calculating Royalty Value for Oil Sold Under an Arm's-Length Contract (§ 1206.101)

Default: ONRR added that the value in this paragraph does not apply if we decide to value your oil under its new default valuation provision, which allows us to value your oil production under § 1206.105 or any other provision in this subpart. We also added that we may decide a lessee's oil value under the default valuation provision if the lessee fails to make the election in this paragraph related to exchange agreements.

Public Comment: Almost unanimously, industry commenters object to the use of ONRR's default provision for oil. Industry comments highlight the following concerns: "standardless" ONRR discretion, second-guessing of arm's-length contracts and other lessee valuations, and a denial of lessees' ability to deduct all appropriate costs to reflect value at the lease. Several industry commenters argued against ONRR's ability to determine royalty value when a lessee or designee sells oil or gas for ten percent less than the lowest reasonable measures of market value. The industry commenters claim that different companies can negotiate better prices than others based on size and bargaining power.

Several industry trade groups stated that it is not clear which offices (audit and compliance, enforcement, valuation, etc.) within ONRR have the ability to invoke the default provision and question whether there would be consistency in its application. These industry commenters also believe that the default provision (1) does not allow ONRR to honor arm's-length contracts and gross proceeds as the basis of valuation as in the past; (2) lacks specific criteria for determining what is reasonable valuation; (3) ONRR should not use it for simple reporting errors; and (4) is burdensome, an overreach of valuation authority, and creates uncertainty. Several industry trade groups add that the proposed rule offers little more than "*raw ipse dixit*" for promulgating its default provision and how ONRR intends to use it.

Several public interest groups suggested that the default provision should be mandatory and not discretionary. The consolidated comments from the State and Tribal Royalty Audit Committee (STRAC) provide that the State or Tribe must grant approval if ONRR applies the default provision in their jurisdiction.

ONRR Response: ONRR disagrees with the commenters' statements that the default provision is a radical departure from our previous valuation policy. The regulatory changes do not alter the underlying principles of the previous regulations. For example, nothing in this final rule changes the Department's requirement that, for purposes of determining royalty, the value of crude oil produced from Federal leases is determined at or near the lease. And nothing in this final rule changes the fact that gross proceeds from arm's-length contracts are the best indication of market value.

The default provision addresses valuation situations where circumstances result in the Secretary of the Interior's (Secretary) inability to reasonably determine the correct value of production. Such circumstances include, but are not limited to, the lessee's failure to provide documents, the lessee's misconduct, the lessee's breach of the duty to market, or any other situation that significantly compromises the Secretary's ability to reasonably determine the correct value. The mineral statutes and lease terms give the Secretary the authority and considerable discretion to establish the reasonable value of production by using a variety of discretionary factors and any other information that the Secretary determines is relevant. The default provision simply codifies the Secretary's authority to determine the value of production for royalty purposes and specifically enumerates when, where, and how the Secretary will use that discretion.

Under this final rule, ONRR will continue the same treatment of arm's-length contracts as we have historically. We have never tacitly accepted values received under arm's-length contracts. We analyze all types of sales contracts in our reviews in order to validate proper value and deductions.

Some commenters contend that ONRR did not perform an adequate economic analysis in assigning a royalty impact to invoking the default provision. We disagree and emphasize, again, that we anticipate using the default provision only in very specific cases where we cannot determine proper royalty values through standard procedures. Moreover, the royalty impact will be relatively small because the default provision will always establish a reasonable value of production using market-based transaction data, which has always been the basis for our royalty valuation rules.

ONRR considers a lessee's refusal to provide requested documents to be a failure to permit an audit that is, and will continue to be, subject to civil penalties. ONRR's choice to invoke the default provision will not impact the lessee's obligation to provide documents or ONRR's ability to assess civil penalties for failure to permit an audit.

Some commenters stated that it is not clear which offices within ONRR will apply the default provision and, if they did, what valuation criteria they would employ. We anticipate that, in most cases, we will use the default provision during the course of an audit. And, as we stated, the criteria that we would use to establish a royalty value is the same basic criteria upon which we base all royalty values. We list these criteria in § 1206.105(a)–(f). Specifically, we may consider the value of like-quality oil in the same field or nearby fields or areas; the value of like-quality oil from the same plant or area; public sources of price or market information that we deem to be reliable; information available and reported to us, including, but not limited to, on the Report of Sales and Royalty Remittance (Form ONRR–2014) and the Oil and Gas Operations Report (Form ONRR–4054); costs of transportation, if we determine that they are applicable; or any information that we deem relevant regarding the particular lease operation or the salability of the oil.

Some industry commenters expressed concerns over their ability to challenge our use of the default provision. Industry's concerns are unwarranted because a company may appeal an order, including an order wherein we used the default provision to determine royalty value. Appeal rights under 30 CFR part 1290 will not change under this final rule.

We disagree with those commenters who sought to make the default provision mandatory. We reiterate that we intend to use the default provision only in specific cases where conventional valuation procedures have not worked to establish a value for royalty purposes. We have the authority to use the default provision on behalf of the Secretary and as part of our delegated or cooperative agreements. We will work with STRAC to determine the royalty value of production that occurs in an affected State or on Tribal lands.

2. Calculating Royalty Value for Oil Not Sold Under an Arm's-Length Contract (§ 1206.102)

Default: ONRR added a default valuation provision that allows us to value your oil production under § 1206.105 or any other provision in this subpart. We addressed comments pertaining to the "Default Provision" paragraph, which we detail in § 1206.101, in this Preamble.

3. Determination of Correct Royalty Payments (§ 1206.104)

Default: ONRR added a default valuation provision that allows us to value your oil production under § 1206.105 or any other provision in this subpart. We addressed comments pertaining to the "Default Provision" paragraph, which we detail in § 1206.101, in this Preamble.

Misconduct: ONRR added a new definition for the term "*misconduct.*" We addressed comments pertaining to this definition, which we detail in § 1206.20, in this Preamble.

Unreasonably high transportation cost: ONRR added a default provision allowing us to determine your transportation allowance under § 1206.105 if (1) there is misconduct by or between the contracting parties; (2) the total consideration that you or your affiliate pays under an arm's-length contract does not reflect the reasonable cost of transportation because you breached a duty to market oil for the mutual benefit of the lessee and the lessor by transporting oil at a cost that is unreasonably high; or (3) ONRR cannot determine if you properly calculated a transportation allowance for any reason. We addressed the default provision in detail in § 1206.101.

Public Comment: Many of the comments from industry and industry trade groups regarding our potential use of the default provision as it relates to the transportation of oil mirror those put forth for determining the value of oil. Commenters believe that our use of a 10-percent variance above the highest reasonable measure of transportation standard is arbitrary, capricious, and unnecessary. Some comments representing States' interests, however, believe that ONRR should include stronger regulatory language requiring us to use the default method when the 10-percent variance is reached.

ONRR Response: The default provision is an accommodating and necessary valuation tool that allows the Secretary to determine the correct amount of transportation deductions for oil. The 10-percent variance that we *may* use in our analysis of transportation transactions is nothing more than a tolerance to help determine a proper transportation allowance. In past and current compliance reviews and audit procedures, we have always used tolerances to reflect what is reasonable in any given market at any given time. Our use of the default provision under the final valuation regulations is a continuation of current practice. We will continue to determine transportation costs that industry incurs on their own merits based on reasonable actual costs allowable under the regulations.

Written contracts: In this final rule, a lessee or its affiliate must have all of its contracts, contract revisions, or amendments in writing and signed by all the parties to those contracts, revisions, or amendments. Where the lessee does not have a written contract, ONRR may use the default provision to determine value.

Public Comment: We received multiple comments on the rule's new provision stating that we will determine transportation allowances under § 1206.105 if lessees do not have a written contract. The commenters generally disagreed with our requirement that all contracts be in writing because such a requirement is inconsistent with industry contracting procedures. Commenters also noted that contracts that are not in writing are still enforceable and that ONRR's definition of a contract in § 1206.20 includes oral contracts that are legally enforceable.

ONRR Response: FOGRMA requires the Secretary to "establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties . . . and to collect and account for such amounts in a timely manner." 30 U.S.C. 1711(a). FOGRMA also requires lessees to provide "any information the Secretary, by rule, may reasonably require" 30 U.S.C. 1703(a). Since adopting the regulations in 1988, ONRR has required lessees to value their oil and gas production based on the gross proceeds accruing to the lessees for the sale of that oil and gas. These gross proceeds include deductions for the lessees' reasonable and actual costs of transportation. When lessees calculate their gross proceeds that include arm's-length sales and arm's-length transportation costs, the lessees must use the terms of those arm's-length contracts to calculate their gross proceeds. We have the responsibility of auditing gross proceeds in order to ensure that they reflect the total consideration actually transferred, either directly or indirectly, from the buyer to the seller. Through this auditing process, we have found it difficult to verify the accuracy of lessees' royalty payments when the lessees enter into oral contracts.

This final rule's requirement that all arm's-length contracts be in writing is a logical evolution of our previous regulations. Section 1207.5 requires lessees to commit oral contracts to written form and keep them as records. And the previous rules required arm's-length sales contract revisions and amendments to be in writing and signed by all parties. For more information about this, *see* §§ 1206.153(j), 1206.52(d)(2), 1206.102(e)(2)(ii) (requiring any amendment or revision to arm's-length purchase prices for oil to be in writing and signed by all parties in the agreement). By requiring fully-executed arm's-length contracts, we no longer rely just on the lessee's written documentation outlining the terms of oral contracts. This guarantees that we can verify that the lessee's gross proceeds calculations are correct and include all consideration that you documented in the contract.

One commenter provided case law indicating that contracts do not have to be in writing to be enforceable. This comment, however, ignores the burden that we bear to verify and accurately determine that the lessees' royalty payments are correct. We must audit and evaluate countless contracts in order to verify royalty payments for Federal and Indian lands. Tracking email exchanges, letters, or other confirmations creates inefficiencies in our accounting and auditing systems, which limits our ability to fulfill FOGRMA's mandate to verify and account for royalty payments.

4. Determination of the Oil Value for Royalty Purposes (§ 1206.105)

Default: ONRR added a default valuation provision that allows us to value your oil production under § 1206.105 or any other provision in this subpart. We addressed comments pertaining to the "Default Provision" paragraph, which we detail in § 1206.101, in this Preamble.

Area: ONRR removes the phrase "legal characteristics" from the definition of the term "*area.*"

Public Comment: We received comments from industry that they oppose the modified definition of "area." The commenters believe that the new definition would "revise the definition of area in a manner that overtly changes the breadth of the marketable condition rule." The commenters rely on the Interior Board of Land Appeals' (IBLA) decision in *Encana Oil & Gas (USA), Inc.*, 185 IBLA 133 (2014) (*Encana*) as an example to illustrate how the definition of area has expanded over time. One commenter stated, "In short, the ONRR's proposed revision of the definition of 'area' will result in inconsistent and uncertain marketable condition determinations."

ONRR Response: We modified the definition of the term "*area*" to clarify that an area does not have boundaries or names. The commenter's concern, however, is misplaced because the definition of the term "*marketable condition*" remains the same. And, as the commenter points out, case law aids in defining the term "*marketable condition.*" We cite *Encana* as the basis for this, where the finding was that a "sales contract typical for the field or area" reasonably refers to the contracts that are typical in the field or area into which the gas is actually sold, which may or may not be the field or area where the gas is produced. Because we do not change the definition of the term "*marketable condition*" and our modification to the term "*area*" does not alter the precedent set out in *Encana* and other cases interpreting the definition of the term "*marketable condition,*" we are retaining the definition of the term "*area*" as we have proposed.

5. Valuation Determination Requests (§ 1206.108)

Guidance and Determinations: Under paragraph (a), a lessee may request a valuation determination or guidance from ONRR regarding any oil produced. Paragraph (a) provides that the lessee's request for a determination must (1) be in writing; (2) identify all leases involved; (3) identify all interest owners in the leases; (4) identify the operator(s) for those leases; and (5) explain all relevant facts. In addition, under paragraph (a), a lessee must provide (1) all relevant documents; (2) its analysis of the issue(s); (3) citations to all relevant precedents (including adverse precedents); and (4) its proposed valuation method.

In response to a lessee's request for a determination, ONRR may (1) decide that we will issue guidance; (2) inform the lessee in writing that we will not provide a determination or guidance; or (3) request that the Assistant Secretary for Policy, Management and Budget (ASPMB) issue a determination.

Paragraphs (b)(3)(i) and (ii) identify situations in which ONRR and the Assistant Secretary typically do not provide a determination or guidance, including, but not limited to, requests for determinations or guidance on hypothetical situations and matters that are the subject of pending litigation or administrative appeals.

Under paragraph (c)(1), a determination that the ASPMB signs binds both the lessee and ONRR unless the Assistant Secretary modifies or rescinds the determination.

Public Comment: Industry raised three concerns regarding valuation guidance and determinations. First, commenters were concerned that ONRR will require excessive data and legal analysis in order for industry to receive valuation guidance or a determination. Second, commenters suggest that ONRR add language specifying that, if a lessee receives non-binding guidance and then chooses not to follow that guidance, ONRR would not pursue civil penalties based on that guidance. Third, commenters suggest that ONRR provide only appealable determinations and binding determinations that the ASPMB signs rather than non-appealable, non-binding guidance.

ONRR Response: In this final rule, we retained the language requiring industry to provide specified information to receive a valuation determination. However, we recognize that, where a lessee requests valuation guidance rather than a determination, less information may suffice because requests for guidance are not requests for our approval of a valuation method.

Under 30 CFR part 1241, ONRR may issue a notice of non-compliance if you fail to comply with any requirement of a statute, regulation, order, or terms of a lease. Because this language clearly establishes when we may issue a notice of non-compliance, it is not necessary to add language specifically addressing civil penalties for failure to follow non-binding guidance.

We provide guidance in cases where industry has a question regarding the application of statutes and regulations to a particular set of circumstances. This guidance provides industry with an opportunity to ask questions about their particular circumstances without proposing a valuation method. Requests for determinations, on the other hand, are proposals from industry for ONRR approval of a specific valuation method. By providing a guidance option, we can answer questions more quickly and without requiring industry to submit all of the information that we would require for a determination. Industry may always request a binding determination.

6. General Transportation Allowance Requirements (§ 1206.110)

In this final rule, we re-ordered paragraph (a) to add clarity.

Subsea gathering: In paragraph (a), we added a new provision stating that you may not take a transportation allowance for the movement of oil produced on the Outer Continental Shelf (OCS) from the wellhead to the first platform. This addition, along with the changes to the definition of gathering, rescinds the Deep Water Policy. We addressed comments pertaining to this issue in § 1206.20.

Fifty-percent allowance cap: In this final rule, we eliminated the regulation allowing us to approve transportation allowances in excess of 50 percent of the value of a lessee's oil production. Under this final rule, any prior approvals terminate on the date when this rule becomes final.

Public Comment: We received comments from States and public interest groups supporting the elimination of ONRR's authority to approve transportation allowances in excess of the 50-percent allowance cap. However, the State commenters asserted that the 50-percent cap, itself, was too broad. The States suggested that we calculate allowance caps for each State and use a percentage based on the average transportation costs in each State over a ten-year period. The State commenters suggested that we update and post such percentages on our Web page.

ONRR Response: At this time, we decline to implement the States' suggestion to reevaluate caps on transportation allowances as a whole. The 50-percent limitation is not the only check on the reasonableness of transportation costs. The 50-percent limitation supplements the requirement that a lessee's transportation costs be actual and reasonable. In this final rule, the limitation clause states that your transportation allowance may not exceed 50 percent of the oil value determined under § 1206.101. This final rule defines the term "*transportation allowance*" as a deduction in determining royalty value for reasonable, actual costs that the lessee incurs for moving oil to a point of sale or delivery off of the lease. The 50-percent limitation is a limit on the allowance—a lessee's reasonable, actual costs of transportation—and not a statement that any cost up to 50 percent is reasonable. To find otherwise would allow a lessee to spend $100 on a repair that could have been performed for $10 and deduct the entirety of the expense against a $200 royalty obligation. Thus, the regulation, read as a whole, mitigates the States' concern.

Public Comment: ONRR received several comments from industry and industry trade groups opposing the elimination of our authority to approve transportation allowances in excess of the 50-percent allowance cap. These commenters stated that the right to request approval to exceed the 50-percent limitation is necessary because its removal denies a lessee the ability to deduct all of its actual, reasonable, and necessary transportation costs when those costs exceed 50 percent.

ONRR Response: The 50-percent limitation is a sufficient transportation allowance. The Mineral Leasing Act (MLA) requires lessees to pay royalties at 12½ percent in amount or value of production removed or sold from the leased lands. The Outer Continental Shelf Lands Act (OSCLA) requires a royalty of not less than 12½ percent in amount or value of production saved, removed, or sold from the leases. However, the MLA and OCSLA do not define the term "*value,*" which gives the Secretary considerable discretion to define the term "*value.*" The regulations at 30 CFR part 1206 determine value and, under these regulations, the Secretary allowed deductions for transportation allowances. It is this discretion that provides an allowance, generally, which the Secretary now caps at 50 percent of the value of oil production.

Public Comment: Several commenters take issue with ONRR terminating any approval that it previously issued for a lessee to exceed the 50-percent limitation. The commenters believe that terminating prior approvals is "retroactive." Thus, the commenters suggest that ONRR should allow such approval to expire on the expiration date set out in the approval.

ONRR Response: We disagree with the commenters who claim that the proposed rule's termination of prior approvals to allow transportation allowances to exceed the value of a lessee's oil production is retroactive. In *Reynolds* v. *United States,* 292 U.S. 443, 449 (1934), the Supreme Court determined that "a statute is not rendered retroactive merely because the facts or requisites upon which it's subsequent action depends, or some of them, are drawn from a time antecedent to the enactment." This means, as long as the new rule does not modify "the *past* legal consequences of past actions," those rules are not improperly retroactive. *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 219–20 (1988) (J. Scalia, concurring). Just because an agency's rule may "upset[ ] expectations based on prior law" does not mean the rule is retroactive. *Mobile Relay Associates* v. *F.C.C.,* 457 F.3d 1, 10–11 (D.C. Cir. 2006).

While terminating prior approvals to exceed the 50-percent cap for transportation allowances may disappoint some lessee's expectations, the rule, itself, is not retroactive because it does not affect the legal consequences of the lessee's past actions. Prior to this final rule, under our approval, a lessee was able to deduct transportation allowances that were higher than 50 percent of the value of the lessee's oil production. The new rule does not hinder the lessee's ability to do so for past production months; however, for each production month after the effective date of this rule, a lessee will no longer be able to deduct over 50 percent of the value of its oil production as a transportation allowance. Thus, this final rule is entirely prospective and not, as the opposing comments suggest, retroactive.

ONRR approved most requests to exceed the 50-percent cap on transportation allowances for a one-year period. Rarely, we approved them for a two-year period. In either case, the proposed rule put lessees on notice that we intended to remove such approvals.

Public Comment: A few commenters also state that, because ONRR retained a similar provision in the new Indian oil valuation amendments, removing that provision here would be arbitrary.

ONRR Response: While we retained the provision in the Indian oil valuation amendments, we have never received a request to exceed the 50-percent limitation on transportation allowances for Indian oil. And, unlike with this rule, the purpose of the Indian oil valuation amendments was to implement recommendations from a negotiated rulemaking committee. Because the committee did not recommend a change, we retained this provision. We may revisit the issue of a cap on transportation allowances claimed on Indian oil at a later date.

Eliminating transportation factors: Previously, ONRR allowed lessees to net transportation from their gross proceeds when the lessees' arm's-length contract reduced the price of the oil by a transportation factor. In this final rule, we eliminated this provision and, instead, require lessees to report such costs as a separate entry on Form ONRR–2014.

Public Comment: ONRR received comments from industry, industry trade groups, and an individual commenter opposing the elimination of transportation factors. The commenters stated that, if ONRR eliminated transportation factors, it would result in numerous complications due to insufficient guidance.

One industry trade group pointed out that ONRR does not define the term "*transportation factor*" in the proposed rule, and it is, therefore, unclear what is or is not a transportation factor. They suggest that, if ONRR pursues not allowing the netting of the transportation factor, ONRR needs to clearly define the term.

The commenters also noted that lessees will have a difficult time discerning what a transportation factor is because the lessees do not incur the costs, their purchasers do. Therefore, the commenters claim that the detail of the costs is not readily available to lessees to accommodate reporting the costs separately as transportation allowances. One commenter stated that transportation factors may include multiple items, "some of which may not be considered a transportation factor."

ONRR Response: In this final rule, lessees may deduct their reasonable actual costs of transportation. The burden lies with the lessees to support their reasonable actual costs of transportation. We have never defined the term "*transportation factor.*" Historically, we used the term "*transportation factor*" to identify the situation when a sales contract contains a provision to reduce the base price by costs that the purchaser incurred to move the production to a downstream location.

These comments underscore why we eliminated transportation factors: To facilitate transparency, audits, and reviews. Eliminating factors ensures that transportation allowances are measurable and auditable because we can identify and audit transportation deductions when lessees report them separately from their sales price. When lessees report their sales value net of transportation, we cannot discern the transportation costs from the sales value. Moreover, the comment stating that transportation factors include multiple other items, including quality differences and services that may not be deductible from the royalty basis, shows the difficulty that we face in reviewing transportation factors as allowable transportation deductions. The factors may include bundled costs or may be a differential. Yet lessees, not ONRR, have the burden of identifying their allowable, reasonable, and actual costs of transportation. Eliminating transportation factors and requiring lessees to report transportation separately as allowances ensures that lessees meet that burden.

Misconduct: ONRR added a new definition for the term "*misconduct.*" We addressed comments pertaining to this issue, which we detail in § 1206.20, in this Preamble.

Default: ONRR addressed comments pertaining to the "Default Provision" paragraph, which we detail in § 1206.101, in this Preamble.

Unreasonably high transportation cost: ONRR addressed comments pertaining to this issue, which we detail in § 1206.104, in this Preamble.

7. Determination of Transportation Allowances for Arm's-Length Transportation (§ 1206.111)

Line fill: ONRR retains the provision allowing a lessee to include the costs of carrying line fill on its books as a component of arm's-length transportation allowances. We deleted proposed § 1206.111(c)(9) and retained line fill as an allowable deduction in the final rule as the new § 1206.111(b)(11). Because oil will only flow through a pipeline if that pipeline is filled with oil, some pipeline operators require that shippers (lessees) leave some of their oil in the pipeline. The shipper's oil that remains in the pipeline is, in effect, inventory that cannot be sold as long as the shipper uses the pipeline to transport its oil. In other cases, the pipeline operator owns the oil that fills the line and charges the shipper a cost at least equal to its capitalized costs as part of the arm's-length price or tariff. We proposed to eliminate this provision because we considered this to be a cost of marketing the oil, reasoning that line fill occurs after the royalty measurement point and is necessary in order for the pipeline operator to transport Federal oil production to downstream markets. We requested comments on whether line fill is a marketing cost.

Public Comment: ONRR received several comments on line fill. Industry pointed out that, in the 2004 Federal Oil Valuation Rule, ONRR identified line fill as a cost of transportation. In that same rulemaking, ONRR also pointed out that they do not allow a lessee to deduct the costs of marketing. At that time, ONRR recognized that line fill is not a marketing cost. Industry believes that line fill is not a cost of marketing oil. Instead, industry believes that, in cases where the pipeline requires it to dedicate its oil to transport its oil, ONRR should permit the cost of carrying this inventory as an allowable transportation deduction.

A public interest group supported the change and believes that the removal of this provision is in keeping with the overall goal of achieving a fair return for the taxpayer. One State agreed with ONRR's proposal, noting that line fill falls within a lessee's duty to market.

ONRR Response: We agree with industry commenters that lessees may deduct their reasonable actual transportation costs. For those lessees who must provide production as line fill, we retained the provision that allows the cost of carrying on your books as inventory a volume of oil that you or your affiliate, as the pipeline operator, maintain(s) in the line as line fill as an allowable transportation cost.

Written contracts: We added a new provision that states that we will determine transportation allowances under § 1206.105 if lessees do not have a written contract for the arm's-length transportation of oil. We addressed comments pertaining to this issue, which we detail in § 1206.104, in this Preamble.

Eliminating transportation factors: Previously, ONRR allowed lessees to net transportation from their gross proceeds when the lessees' arm's-length contract reduced the price of the oil by a transportation factor. In this final rule, we eliminated this provision and, instead, require lessees to report such costs as a separate entry on Form ONRR–2014. We addressed comments pertaining to this issue, which we detail in § 1206.110, in this Preamble.

8. Determination of Transportation Allowances for Non-Arm's-Length Transportation Contracts (§ 1206.112)

Line fill: ONRR retains the provision that allows lessees to include the costs of carrying line fill on their books as a component of arm's-length transportation allowances. We deleted proposed § 1206.111(c)(9) and retained line fill as an allowable deduction in the final rule as the new § 1206.112(c)(1)(v). We proposed to eliminate this provision because we considered this a cost of marketing the oil, reasoning that line fill occurs after the royalty measurement point and is necessary in order for the pipeline operator to transport Federal oil production to downstream markets. We requested comments on whether line fill is a marketing cost. We addressed comments pertaining to this issue, which we detail in § 1206.110, in this Preamble.

Pipeline losses: In this final rule, under paragraph (c)(2)(ii), ONRR eliminated the provision that allows lessees to deduct the costs of pipeline losses, both actual and theoretical, under non-arm's-length transportation situations.

Public Comment: Multiple companies and industry trade groups opposed removing the provision to allow lessees with non-arm's-length transportation arrangements to deduct actual and theoretical losses, stating that losses are a real cost to lessees.

A State commenter supported this change and suggested disallowing all losses, including line loss charges under arm's-length contracts. A public interest group supported this change, stating that this change will ensure that royalty value is based on oil actually removed from the lease without subsidizing losses occurring after the royalty measurement point.

ONRR Response: Beginning with the May 5, 2004, Federal Oil Valuation Rule, we allowed lessees to deduct the costs of actual line losses in non-arm's-length oil transportation situations. Since that time, it has been difficult for lessees to demonstrate, and impractical for us to verify, that line losses in non-arm's-length or no-contract situations are valid and not the result of meter error or other difficult-to-measure causes.

FOGRMA requires the Secretary to "establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties . . . and to collect and account for such amounts in a timely manner" (30 U.S.C. 1701(a)). Because we must account for all royalties and associated deductions and because we cannot properly verify deductions associated with losses in non-arm's-length situations, we retain the language from the proposed rule that lessees may not deduct any costs associated with actual or theoretical losses in non-arm's-length oil transportation situations. We will still allow lessees to deduct the actual costs of losses that they incur under arm's-length transportation agreements because the payment is a true out-of-pocket expense to the lessee.

BBB bond rate: ONRR reduced the multiplier on any remaining undepreciated capital costs from 1.3 to 1.0 times the Standard & Poor's BBB bond rate. We moved this provision to § 1206.112(i)(3).

Public Comment: Several companies and industry trade groups opposed modifying the Standard & Poor's BBB bond rate multiplier. Commenters state that ONRR failed to sufficiently analyze rates of return for pipelines and should provide better support for its decision to reduce the multiplier to 1.0. A State supported reducing the multiplier, noting that market fluctuations impact transportation facilities less.

ONRR Response: Modifying the Standard & Poor's BBB bond rate multiplier recognizes changes within the economy since 2005 (including lower interest rates) and creates consistency with other product valuation guidelines. This rate better reflects the cost of borrowing to finance capital expenditures involved in pipeline construction.

9. Adjustments and Transportation Allowances When Using NYMEX Prices or Alaska North Slope (ANS) Prices for Oil Royalty Value (§ 1206.113)

Eliminating transportation factors: Previously, ONRR allowed lessees to net transportation from their gross proceeds when the lessees' arm's-length contract reduced the price of the oil by a transportation factor. In this final rule, we eliminated this provision and, instead, require lessees to report such costs as a separate entry on Form ONRR–2014. We addressed comments pertaining to this issue, which we detail in § 1206.110, of this Preamble.

10. Reporting Requirements for Arm's-Length Transportation Contracts (§ 1206.115)

Eliminating transportation factors: Eliminating transportation factors will require lessees to report any transportation costs embedded in an arm's-length contract as a separate line entry on Form ONRR–2014.

Public Comment: ONRR received multiple comments indicating industry would suffer significant administrative burdens to extract, separate or "unbundle" transportation costs from their arm's-length sales contracts. The commenters indicated that removing transportation factors will result in "large scale contract review and major changes to accounting systems and processes."

ONRR Response: We recognize that eliminating transportation factors requires lessees to report their transportation costs embedded in an arm's-length contract separately as a transportation allowance, which may require changes in the lessees' reporting systems. However, removing transportation factors increases transparency and helps us verify that such costs are the reasonable and actual costs that lessees incur for transportation. Furthermore, as we mentioned previously, transportation factors may include multiple items embedded in arm's-length sales contracts.

C. Specific Comments on 30 CFR Part 1206—Product Valuation, Subpart D—Federal Gas

1. Calculating Royalty Value for Unprocessed Gas Sold Under an Arm's-Length or Non-Arm's-Length Contract (§ 1206.141)

Dual accounting: Because we removed the dual accounting requirement under proposed § 1206.151, we deleted paragraph (a)(3), which referenced it. We re-numbered proposed paragraph (a)(4) as (a)(3) in this final rule.

First arm's-length sale: In this final rule, ONRR eliminated the non-arm's-length valuation benchmarks and requires lessees to value gas production based on how they sell their gas (*such as* using (1) the first arm's-length-sale prices, (2) optional index prices, or (3) volume weighted average of the values established under this paragraph for each contract for the sale of gas produced from that lease). Under § 1206.141(b)(2), if you sell or transfer your Federal gas production to your affiliate, or some other person at less than arm's-length, and that person or their affiliate then sells the gas at arm's-length, you will base your royalty value on the other person's (or their affiliate's) gross proceeds under the first arm's-length contract. However, two exceptions apply: (1) Lessees may elect to use the index-pricing option under § 1206.141(c) of this section, or (2) we decide to value your gas under the default valuation provision in § 1206.144.

Public Comment: A State and a public interest group supported ONRR's proposal to require lessees to value non-arm's-length dispositions of gas production based on the first arm's-length sale rather than the gas valuation benchmarks.

Industry trade groups suggested that ONRR reword the regulatory language under subsection (b) for clarity. The commenters were concerned that the word "may" and the words "or another person," could lead to misinterpretation of this rule's intent.

ONRR Response: We recognize that the wording under proposed § 1206.141(b) caused some confusion and reworded this paragraph in the final rule.

Public Comment: Several industry commenters asserted that tracing their affiliates' arm's-length gross proceeds is complicated and burdensome. One industry trade group remarked that § 1206.141(b) does not address costs unique to marketing and transporting Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG), where the first arm's-length sale may be at a distant international market.

ONRR Response: The values established in arm's-length transactions are the best indication of market value. We recognize that changes in industry and the marketplace may make it difficult for a lessee to value its gas using the benchmarks. To address these difficulties, we eliminated the benchmarks in order to provide early certainty and gave lessees with non-arm's-length sales the option to value gas based on the first arm's-length sale or index prices.

Index-based valuation option: ONRR added a new paragraph (c) containing an index-price valuation method that a lessee may elect to use in lieu of valuing its gas under proposed paragraphs (b)(2) and (b)(3). ONRR based the method on publicly-available index prices, less a specified deduction to account for processing and transportation costs. This valuation method also applies to certain "no contract" situations that we describe under paragraph (e).

The index-based option provides a lessee with a valuation option that is simple, certain, and avoids the requirements to unbundle fees and "trace" production. This is applicable when there are numerous non-arm's-length sales prior to an arm's-length sale. Under paragraph (c), the lessee may choose to value its gas only in an area that has an active index pricing point published in an ONRR-approved publication. The lessee may elect to value its gas under this paragraph, making that election binding on the lessee for two years. ONRR will post a list of approved publications at *www.onrr.gov.*

In this final rule, under paragraph (c), there are three possible scenarios for establishing the index-price point. The first scenario is when you can only transport gas to one index pricing point published in an ONRR-approved publication. In this scenario, your value for royalty purposes is based on that index pricing point.

The second scenario is when you can physically transport gas to more than one index pricing point. In this scenario, you must base your value for royalty purposes on the highest index pricing point to which your gas could flow. For example, assume that you have a lease in the West Delta area of the Gulf of Mexico, and your lease is physically connected by a pipeline to the Mississippi Canyon Pipeline. In this case, your gas is physically capable of flowing to the Toca Plant (through the Southern Natural Gas Pipeline), the Yscloskey Plant (through the Tennessee Gas Pipeline), or the Venice Plant. This means that you have multiple index pricing points to which your gas can physically flow. Also, assume that the highest reported monthly bidweek price among the multiple index pricing points is the Tennessee Gas 500 Leg Price at the tailgate of the Yscloskey Plant. Finally, assume that you cannot flow your gas through the Tennessee Gas Pipeline (to the Yscloskey Plant) because all available capacity on that pipeline is under contract to other persons, and the pipeline has no capacity available to you for the production month—in other words, it is constrained. In this example, you would use the highest reported monthly bidweek price at the tailgate of the Yscloskey Plant as the value under this paragraph even though your gas did not flow to that index pricing point during that production month.

The third scenario is when there are multiple sequential pricing points on a pipeline through which you could transport your gas. In this scenario, you must base your value for royalty purposes on the first index pricing point after your gas enters that pipeline.

Under paragraph (c), the lessee can only use an index pricing point if it could physically transport its gas to that index pricing point because there is a pipeline or series of pipelines that physically connect to the lease and flow from the lease to the index pricing point. We will exclude the use of index pricing points where a lessee cannot sell its gas.

If the lessee can transport its gas to only one index pricing point, the lessee must base its value under paragraph (c)(1)(i) on the highest reported monthly bidweek price for that index pricing point in the ONRR-approved publication for the production month. If the lessee can transport its gas to more than one index pricing point, the lessee must base its value under paragraph (c)(1)(ii) on the highest reported monthly bidweek price for the index pricing points to which the lessee could transport its gas in the ONRR-approved publication for the production month. However, under paragraph (c)(1)(iii), if there are sequential index pricing points on a pipeline, the lessee must base its value on the first index pricing point at or after the lessee's gas enters the pipeline.

We recognize that index pricing points are normally located off of the lease and, frequently, are at lengthy distances from the lease. Thus, under paragraph (c)(1)(iv), we allow a lessee to reduce the highest reported monthly bidweek price by a set amount to account for transportation costs that a lessee would incur to move the gas from the lease to an applicable index pricing point. We will allow a lessee to reduce the highest reported monthly bidweek prices by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

Paragraph (c)(1)(v) states that, after you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every two years. We will also, under paragraph (c)(1)(vi), exclude individual index prices from this option if we determine that the index price does not accurately reflect the value of production. We will post a list of excluded index pricing points at *www.onrr.gov.*

Paragraph (c)(2) explains that you may not take any other deductions from the value calculated under this paragraph (c) because you would already receive a reduction for transportation under paragraph (c)(1)(iv).

Public Comment: Public interest groups supported the changes as an overall effort to provide greater clarity and transparency to the valuation process. A State commenter and STRAC opposed using an index-based option for reasons identified below.

While industry commenters supported the idea of an index-based method, they did not support the method as proposed. Industry commenters explained that the proposed index-based method results in a value so far above what is reasonable that few lessees would choose to use it. Commenters argued that using the highest bidweek price results in an inflated value for royalty purposes and is neither reasonable nor justified.

ONRR Response: The value under an index-based valuation option is reasonable and justified because of the benefits that it affords to the lessee. Lessees have the burden of showing that none of the costs that they incur and deduct are costs to place their gas production in marketable condition. *Burlington Res. Oil & Gas Co. LP* v. *U.S. Dep't of the Interior,* No. 13–CV–0678–CVE–TLW, 2014 WL 3721210, at *12 (N.D. Okla. July 24, 2014). This burden includes separating or "unbundling" costs associated with putting production in marketable condition as discussed in *Burlington.* If the lessee chooses to use the index-based option, it will relieve the lessee of those responsibilities. While this method benefits lessees, it must also protect the interests of the Federal lessor. The index-based valuation method does just that.

Public Comment: Industry commenters argued that the requirement to use the highest index price at a pricing point to which a lessee's gas *could* flow effectively requires a lessee to pay royalty on the highest theoretically obtainable price, even though that price is not, in fact, obtainable. They explained that ONRR cites no authority or justification for this proposed standard. Instead, the commenters suggested that the rule require a lessee to base the value of its gas on the index where the lessee's gas actually flowed.

ONRR Response: This provision protects the interests of the Federal lessor, while also simplifying the royalty reporting process for industry. If this rule required a lessee to calculate royalty on the basis of the index pricing point(s) to which the gas did flow, we would require companies to trace production, potentially through a series of affiliated transactions, and determine what volumes of gas flowed to which index pricing points. This increases the burden for both industry and us. We retained this provision in the final rule because it is consistent with the administrative simplicity that the index-based method seeks to achieve.

Public Comment: Industry commenters stated that the fixed adjustments for transportation are too low and do not reflect current gas transportation rates.

ONRR Response: We analyzed transportation rate data, as we discussed in the Procedural Matters section, and determined that the rates, as proposed, are a reasonable reduction to the index price.

Public Comment: A State commenter expressed concern over the potential manipulation of prices, providing that commercial price bulletins are subject to manipulation and, indeed, have been manipulated.

ONRR Response: We recognize the State's concern, but the index-based valuation method protects the Federal and State royalty interests for the following reasons: (1) Federal Energy Regulatory Commission (FERC) must approve pricing publications, and the publication companies also have protections to prevent and discourage price manipulation; (2) we have the discretion to disallow the use of price points that are not liquid and are more subject to manipulation; (3) we designed the index-based valuation method to generally result in a value higher than gross proceeds because of the simplicity and clarity that it affords to lessees; and (4) index prices are a trusted measure of value in the gas sales industry and the basis for many arm's-length sales contracts.

Public Comment: STRAC requested that (1) States have the option to "opt in" for index-based valuation (similar to Indian Tribes for Indian gas valuation); (2) there be some "price testing" on the use of these index prices; and (3) there be a "true-up" to ensure that the index-based valuation was higher than a company's gross proceeds.

ONRR Response: The index-based value protects both Federal and State interests. We analyzed Form ONRR–2014 royalty data and compared it to index prices for the years 2007 through 2010. We found that the index price was consistently higher than the average value received under gross proceeds. A rule that allows each State to choose to opt in or requires an annual true-up negates the administrative simplicity and clarity that we intend for the index-based option.

Public Comment: One industry trade group commented that ONRR's proposal would burden small operators with the added expense required to subscribe to an industry price publication, which they believe is an unnecessary cost.

ONRR Response: We note that there is, potentially, an additional expense if a company values their gas under the index-based option. We consider this potential additional expense to be a cost of doing business associated with properly reporting and paying Federal royalties.

Public Comment: Industry commenters strongly urged that the index-based option be available to value arms-length transactions. These commenters noted that the 1995–1996 Federal Gas Valuation Negotiated Rulemaking Committee recommended the same. One industry trade group specifically stated, "ONRR should afford Federal gas lessees the option of using an index-pricing option to value royalties under arm's-length sales to avoid the burden of chasing gross proceeds to distant markets and to obviate the unnecessary step of creating an affiliate simply for the purpose of affording the lessee the regulatory option of choosing index pricing."

ONRR Response: Gross proceeds under valid arm's-length transactions are the best measure of value. The use of index prices as one option for valuing non-arm's-length transactions is appropriate because of the complex nature of transactions between affiliates and the potential administrative burden of pursuing and supporting the value under the first arm's-length sale. In this final rule, we will not expand the index-based option to arm's-length sales.

No-sale situations: Paragraph (d)(1) provides that, if you have no written contract or no sale of gas subject to this section, and there is an index pricing point for the gas, then you must value your gas under the index-pricing provisions of paragraph (c) of this section unless ONRR values your gas under § 1206.144. We intended this provision to address situations including, but not limited to, when (1) the lessee sells its gas to an affiliate, and the affiliate uses the gas in its facility; (2) the lessee sells its gas to an affiliate, the affiliate resells the gas to another affiliate of either the lessee or itself, and that affiliate uses the gas in its facility; (3) the lessee uses the gas as fuel for its other leases in the field or area; or (4) the lessee delivers gas to another person as payment for an overriding royalty interest that the other person holds.

Public Comment: A commenter noted that lessees do not sell gas used or lost along the pipeline and may currently value those volumes under the benchmark valuation regulations. The commenter stated that, previously, using the price that the lessee received for the gas that it sold as the basis to value its gas used or lost along the pipeline was a much more certain method of valuing gas, which also satisfied benchmark two. Instead, the commenter argues that the rule requires the lessee to submit a proposed valuation method and be subject to having to make retroactive changes if ONRR does not accept the proposed method. The commenter argued that it was unfair to require lessees who cannot otherwise use the index-based option (those making arm's-length sales) to have to use the index-based pricing to value gas used or lost along a pipeline and adds unnecessary complexity.

ONRR Response: We thank this commenter for the insightful comment. We acknowledge that the proposed rule was not clear in providing a method for a lessee to use to value its gas used or lost along a pipeline prior to sale and disallowed fuel used in a gas plant. To add clarity and simplicity, we renumbered the proposed paragraph (d) to paragraph (e). For the new paragraph (d), we inserted new language that allow the lessee to value this gas for royalty purposes using the same royalty valuation method for valuing the rest of the gas that the lessee sells.

In addition to the four situations above, and in the preamble to the proposed rule, we note that the lessee should use new paragraph (e) when the lessee is required to pay royalty on vented, flared, or otherwise lost gas as the BLM or Bureau of Safety and Environmental Enforcement (BSEE) determined.

Public Comment: A company stated that the proposed regulation does not provide a method to value its gas when the lessee did not sell its gas but, rather, used it on site to generate electricity. It also argued that eliminating the fourth benchmark (netback) in the previous rule could negatively affect lessees that use gas to generate electricity because an index price is not an accurate indicator of market value.

ONRR Response: We disagree with the comment because this final rule addresses the situation wherein a lessee does not sell its gas because the gas is used on site to generate electricity under § 1206.141(e). This paragraph provides that, where there is no sale of the gas and there is not an active index pricing point, we will value your gas under § 1206.144(f).

2. Calculating Royalty Value for Processed Gas Sold Under an Arm's-Length or Non-Arm's-Length Contract (§ 1206.142)

Percentage-of-Proceeds (POP) contracts: Paragraph (a)(2) applies to situations where a lessee sells its gas before processing and must base their royalty payment on any constituent products, resulting from processing, such as residue gas, NGLs, sulfur, or carbon dioxide. This final rule requires lessees to value POP contracts, percentage-of-index contracts, and contracts with any variations of payment based on volumes or the value of those products as processed gas.

Public Comment: Commenters from industry, industry trade groups, and STRAC opposed this change. Industry commenters and STRAC focused their comments on the reporting burden and financial impact of this change. One commenter explained, "Because POP contracts have, since, November of 1991 been subject to the unprocessed gas valuation regulations, many companies do not have accounting systems set up to report anything other than a single product code 04 line." The commenters explain that this proposed change would impose significant accounting system costs and delays in reporting.

One company stated that the current regulations recognize that the lessee no longer has title to or control over production after its POP buyer takes possession at the wellhead or plant inlet, highlighting that the lessee is not obligated to place residue gas and plant products in marketable condition. It believes that, by treating arm's-length POP contracts as sales of processed gas, ONRR improperly places the burden on the lessees to bear the costs to place residue gas and plant products in marketable condition despite the fact that the lessees do not have title to or control over same.

ONRR Response: We understand that this change may increase the number of reported lines and may require some companies to adjust their systems. Yet, if a company is in compliance under the previous rules (not taking more than the allowance limits without approval, adding back costs associated with placing the gas into marketable condition, adding back marketing fees, etc.), this change should not be overly burdensome. This change increases data transparency, more accurately values the products sold under these types of sales contracts, and allows us to better monitor allowances and account for royalty interest more quickly and accurately.

Contrary to the commenter's assertions, past regulations did place the responsibility on lessees who sell their gas at the wellhead under POP-type contracts to place the residue gas and gas plant products into marketable condition at no cost to the Federal government. Simply selling the gas at the wellhead does not mean that the gas is in marketable condition—one must look to the requirements of the main sales pipeline. The U.S. District Court for the Northern District of Oklahoma supported ONRR's position under the past regulations, finding that, "Whether gas is marketable depends on the requirements of the dominant end-users, and not those of intermediate processors" *Burlington Res. Oil & Gas Co. LP* v. *U.S. Dep't of the Interior,* No. 13–CV–0678–CVE–TLW, 2014 WL 3721210, at *11 (N.D. Okla. July 24, 2014).

Valuation of keepwhole contracts: Paragraph (a)(3) states that the lessee must value gas processed under a "keepwhole" contract as processed gas. Under § 1206.20, we define the term "*keepwhole contract*" as a processing agreement under which the processor compensates the lessee by delivering to the lessee a quantity of residue gas (after processing) that is equivalent to the quantity of gas the processor received (prior to processing), normally based on heat content, less gas used as plant fuel and gas that is unaccounted for and/or lost. The lessee does not receive NGLs under these contracts. We often find that lessees are confused about how to value, for royalty purposes, gas processed under such contracts and then sold. This provision clarifies that a lessee must value gas processed under a keepwhole contract as processed gas. That is, royalty is based on 100 percent of the value of residue gas, 100 percent of the value of gas plant products, plus the value of any condensate recovered downstream of the point of royalty settlement prior to processing, less applicable transportation and processing allowances.

Public Comment: Commenters from industry trade groups and STRAC opposed this provision. They believe that ONRR should eliminate the requirement to report gas processed under a keepwhole contract as processed gas. The industry trade groups explained that companies do not have the data to report keepwhole contracts as processed gas. STRAC added that valuing keepwhole contracts as processed gas does not, in their experience, result in additional revenue collections, but it requires a significant amount of work for both auditors and industry.

ONRR Response: Our regulations require lessees to base their royalties for gas sold after processing on the values of condensate, residue gas, and gas plant products resulting from processing gas produced from a Federal lease. Lessees sell gas processed under keepwhole contracts after processing, and, therefore, lessees should value their gas as such. This requirement also protects the public from hidden processing deductions that the lessee takes that may exceed the 66⅔ percent limit of the value of the NGLs. Additionally, numerous entities rely on and scrutinize our data, making accurate reporting essential.

To aid lessees in their effort to properly compute royalties for gas processed under a keepwhole contract, we published a reporter letter dated November 21, 2012 (Reporter Letter). The Reporter Letter provided guidance on how to report keepwhole contracts, including instructions for situations where the lessee receives no NGL volume or value data. It is important to note that, in most cases, this requirement does not increase the royalties that a lessee pays because the lessee may include the difference in value between the gallons of NGLs that the plant recovered and the MMBtu-equivalent of the NGLs returned to the producer in its processing allowance.

First arm's-length sale: In this final rule, ONRR eliminated the non-arm's-length valuation benchmarks. Instead, this final rule requires lessees to value residue gas and gas plant products based on how they sell their residue gas and gas plant products (such as using (1) the first arm's-length-sale prices, (2) optional index prices, or (3) volume weighted average of the values established under this paragraph for each contract for the sale of gas produced from that lease). Under § 1206.142(c)(2), if you sell or transfer your Federal residue gas and gas plant products to your affiliate, or some other person at less than arm's-length, and that person or its affiliate then sells the residue gas and gas plant products at arm's-length, royalty value will be the other person's (or its affiliate's) gross proceeds under the first arm's-length contract. However, two exceptions apply: (1) Lessees may elect to use the index-pricing option under § 1206.142(d) of this section, or (2) ONRR decides to value your residue gas and gas plant products under the default valuation provision in § 1206.144.

Public Comment: ONRR received comments from a State and a public interest group supporting ONRR's proposal for lessees to value non-arm's-length dispositions of residue gas and gas plant products based on the first arm's-length sale rather than the benchmarks contained in the previous rule. Several industry commenters asserted that tracing their affiliates' arm's-length gross proceeds is complicated and burdensome. One industry trade group remarked that § 1206.142(c) does not address costs unique to marketing and transporting CNG and LNG, where the first arm's-length sale may be at a distant, international market.

ONRR Response: The values established in arm's-length transactions are the best indication of market value. We recognize that changes in industry and the marketplace may make it difficult for a lessee to value its gas using the benchmarks. To address these difficulties, we eliminated the benchmarks to provide early certainty and gave lessees with non-arm's-length sales the option to value gas based on the first arm's-length sale or index prices.

Index-based valuation option: Paragraph (d)(1) applies to residue gas. It has the same index-price option as § 1206.141(c)(i) through (vi). We discuss using index pricing points in § 1206.141 of this Preamble.

Paragraph (d)(2) contains the index-based pricing option for NGLs. Under paragraph (d)(2)(i), if you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov,* you may choose one bulletin, and your value for royalty purposes would be based on the monthly average price for that bulletin for the production month. We consider you to be selling NGLs in an area with an ONRR-approved commercial price bulletin if actual sales of NGLs that the plant processing your gas recovers are made using NGL prices in an ONRR-approved commercial price bulletin. For example, in our experience, actual sales of NGLs recovered in plants in New Mexico commonly reference Mont Belvieu, Texas, prices in Platts, while actual sales of NGLs recovered in plants in certain parts of Wyoming reference Mont Belvieu, Texas, or Conway, Kansas, prices. If you process your gas at one of these plants with these types of actual sales arrangements, we will consider you to be selling NGLs in an area with an ONRR-approved commercial price bulletin. In that case, you may elect to value your NGLs using the index-price method if your NGLs meet the requirements for using that method. We will monitor actual sales of NGLs and eliminate any area where an active market using NGLs prices in an ONRR-approved commercial price bulletin ceases to exist.

Under paragraph (d)(2)(ii), you may reduce the index-based value that you calculate under paragraph (d)(2)(i) by a specified amount to account for a theoretical processing allowance and Transportation and Fractionation (T&F). Therefore, the reduction includes two components that we calculated: (1) An allowance based on processing allowance information lessees report to us and (2) T&F based on our review of gas plant contracts and gas plant statements.

For the processing allowance component, ONRR examined processing allowances that lessees and others reported from January 2007 through October 2011. We segregated the data into two subsets: (1) The Gulf of Mexico (GOM) and (2) onshore Federal leases and OCS leases other than those in the GOM. We segregated the leases geographically because the GOM is closer to major market centers at Mont Belvieu, Napoleonville, and Geismer/Sorrento and, generally, has its own processing, transportation, and fractionation regimen that is distinct from the rest of the country. It is not fair or accurate to benchmark processing for the entire country based on the economics of GOM processing.

We could not segregate non-arm's-length processing allowances because lessees do not identify processing allowances as arm's-length or non-arm's-length when they report to ONRR. Rather, we calculated a weighted-average cents-per-gallon processing allowance by month for both GOM and all other Federal leases. Using the weighted average cents-per-gallon processing allowance that we calculated, we determined the average allowance rate over the five-year period, along with the maximum and minimum monthly rates as follows:

	GOM (¢/gal)	Other (¢/gal)
Average Rate	17	22
Maximum Rate	29	32
Minimum Rate	10	15

Because we intend for this option to provide a simple method for us to calculate and provide to lessees, we used the minimum, rather than the average rate, for the processing allowance portion of the deduction. For both the GOM and all other Federal leases, the minimum rate is seven cents less than the average rate. We find that (1) the minimum allowance best protects the public interest and (2) a lessee experiencing higher allowable costs than this rate does not have to elect to use this option and the lower cost allowance. Moreover, seven cents is a reasonable tradeoff given the simplicity, certainty, and commensurate administrative savings that this option would provide to a lessee.

For the T&F part of the reduction, we examined contracts that specified T&F. If contracts did not specify T&F, we looked at the gas plant statements. If the statements listed T&F as a line item, we used that line item as the T&F. If the statements did not list T&F as a line item, we calculated the difference between the price on the plant statement and an appropriate published price to approximate the T&F. We then averaged these T&F costs for GOM, New Mexico, and other, as follows:

	GOM	New Mexico	Other
Average T&F	5¢/gal	7¢/gal	12¢/gal.

We broke out New Mexico because the T&F fees for New Mexico plants were consistently around seven cents per gallon and were considerably less than for other onshore plants. We then added the processing allowances that we calculated and the T&F. Based on the five years of data discussed above, we calculated that the total NGLs reductions that lessees could use under this option are as follows:

	GOM	New Mexico	Other
NGLs Deduction	15¢/gal	22¢/gal	27¢/gal.

Under paragraph (d)(2)(ii), rather than publish the reductions in the CFR, we will post the reductions at *www.onrr.gov* for the geographic location of your lease. ONRR will calculate the reductions using the method explained above. This process will give us the flexibility to quickly recalculate and provide revised reductions to lessees in response to market changes. This method is binding on you and us. Under paragraph (d)(4), we will update the allowable reductions periodically using this method and post changes at *www.onrr.gov.*

Paragraph (d)(2)(iii) explains that, after you select an ONRR-approved commercial price bulletin available at *www.onrr.gov,* you may not select a different commercial price bulletin more often than once every two years. Under paragraph (d)(3), you may not take any other deductions from the value that you used under this paragraph (d) because it already includes reductions for transportation and processing.

Paragraph (e) mirrors § 1206.141(d); this explains how you must value certain volumes of processed gas or NGLs that are used as fuel, lost, or retained as a fee under the terms of a sales or service agreement.

Paragraph (f) mirrors § 1206.141(e); this explains how you must value your processed gas and NGLs if you have no written contract for the sale of gas or no sale of the gas subject to this section.

Public Comment: Several industry commenters noted that ONRR provided no adjustment to the index price for transportation of the NGL component of the gas stream from the wellhead to the gas plant. The only adjustment is for the costs of transporting and fractionating the recovered NGLs. One commenter suggested that ONRR use the same adjustment that ONRR used in calculating the index-based value for the unprocessed or residue gas (10 percent, but not less than 10 cents per MMBtu or more than 30 cents per MMBtu).

ONRR Response: We do not agree that an adjustment is necessary. The adjustment would be small, and not including it is fair considering our use of the average index price instead of the high index price. This final rule does not require a lessee to use the index option, but the lessee can elect to base its royalty value on the first arm's-length sale.

Public Comment: One industry trade group requested that ONRR clarify whether we intend to use the "average highest price" or the "average average price" for the index-based valuation method for NGLs.

ONRR Response: In our experience, NGL price publishers publish an average and high NGL price. They do not publish an "average average" or "average high" price. We will use the average index price.

Public Comment: One industry trade group commented that New Mexico producers were particularly disadvantaged by the T&F rates that ONRR proposed.

ONRR Response: Our experience indicates that seven cents per gallon is a reasonable estimate for T&F rates in New Mexico. T&F rates are generally lower in New Mexico than in the rest of the country because New Mexico producers have more direct access to Mont Belvieu, Texas.

Public Comment: An industry commenter questioned what remedy a lessee would have if ONRR did not follow the method set forth in the preamble. The commenter noted that the proposed regulation provided that an election to use index-based pricing cannot be changed more often than once every two years. Then the commenter suggested that it is hard for a company to make an election when the basis for making the election, including ONRR's posting of the amounts that can be deducted, can be changed during the two-year period for which the election was made.

ONRR Response: The two-year election period offers sufficient protection for lessees if we change the rates. Any changes to rates will be based on changes to the markets, which should generally correspond to changes that producers would see if they were reporting gross proceeds.

No-sale situations: Paragraph (e)(1) provides that, if you have no written contract or no sale of gas subject to this section and there is an index pricing point for the gas, then you must value your gas under the index-pricing provisions of paragraph (d) of this section unless ONRR values your gas under § 1206.144. We intended this provision to address situations including, but not limited to, when (1) the lessee sells its gas to an affiliate, and the affiliate uses the gas in its facility; (2) the lessee sells its gas to an affiliate, the affiliate resells the gas to another affiliate of either the lessee or itself, and that affiliate uses the gas in its facility; (3) the lessee uses the gas as fuel for its other leases in the field or area; or (4) the lessee delivers gas to another person as payment for an overriding royalty interest that the other person holds.

Public Comment: A commenter noted that lessees do not sell gas or gas plant products used or lost along the pipeline and may currently value those volumes under the benchmark valuation regulations The commenter stated that, previously, using the price that the lessee received for the gas that it sold as the basis to value its gas used or lost along the pipeline was a much more certain method of valuing gas, which also satisfied benchmark two. Instead, the commenter argues that the rule requires the lessee to submit a proposed valuation method and be subject to having to make retroactive changes if ONRR does not accept the proposed method. The commenter argued that it was unfair to require lessees who cannot otherwise use the index-based option (those making arm's-length sales) to have to use the index-based pricing to value gas or gas plant products used or lost along a pipeline and adds unnecessary complexity.

ONRR Response: We thank this commenter for the insightful comment. We acknowledge that the proposed rule was not clear in providing a method for which a lessee shall value gas used or lost along a pipeline prior to sale and disallowed fuel used in a gas plant. In an effort to add clarity and simplicity, we will, therefore, renumber the proposed paragraph (e) to paragraph (f). For the new paragraph (e), we inserted new language that allows the lessee to value this gas for royalty purposes using the same royalty valuation method for valuing the rest of the gas that the lessee sells.

3. Determination of Correct Royalty Payments (§ 1206.143)

Default: ONRR added a default valuation provision that allows us to value your gas, residue gas, or gas plant products under § 1206.144 or any other provision in this subpart D. We addressed comments pertaining to the "default provision" paragraph, which we detail in § 1206.101, of this Preamble.

Public Comment: All of the commenters who addressed the default provision under Federal oil had the same comments for Federal gas, and we will not repeat them here. Please refer to the public comments for Federal oil for an overall discussion of the default provision.

Specifically for gas, several commenters stated that ONRR lists comparability factors in its valuation method that contradict what ONRR permits lessees to consider. They state, for example, that ONRR may look to the value of like-quality gas, residue gas, or gas plant products in the same or nearby fields or plants, but it is not permitting lessees the option to use these standards as part of their valuation processes in the first instance.

ONRR Response: We will only respond, here, to those comments that are specific to gas, residue gas, and gas plant products. For a broader response to the default provision, because it also relates to Federal gas, please see ONRR's response to Federal oil, which we detail in § 1206.101, of this Preamble.

We disagree with commenters that state that we list comparability factors in our default valuation method that contradict what we permit the lessees to consider. Valuation, first and foremost, is generally based on the gross proceeds accruing to the lessee under an arm's-length contract or received under the first arm's-length sale following a sale to an affiliate. Only in rare situations, when normal valuation methods are not viable or there has been other extenuating circumstances, will we defer to the valuation criteria listed in § 1206.144.

This final rule delineates factors that we may consider if we decide to determine the value of natural gas for royalty purposes under the default provision. Those factors may include, but are not limited to the following: the value of like-quality gas in the same field or nearby fields or areas; the value of like-quality residue gas or gas plant products from the same plant or area; public sources of price or market information that we deem to be reliable; information available or reported to us, including but not limited to, on Form ONRR–2014 and Form ONRR–4054; costs of transportation or processing, if we determine that they are applicable; and any information that we deem relevant regarding the particular lease operation or the salability of the gas.

Misconduct: ONRR added a new definition for the term misconduct. We addressed comments pertaining to this definition, which we detail in § 1206.20, of this Preamble.

4. Determination of gas value for royalty purposes (§ 1206.144)

Default: ONRR added a default valuation provision which allows us to value your gas under § 1206.144 or any other provision in this subpart. We addressed comments pertaining to the "default provision" paragraph, which we detail in § 1206.101, in this Preamble.

Area: ONRR removed the phrase "legal characteristics" from the definition of area. We addressed comments pertaining to this definition and the regulations that it affects, detailed in § 1206.105, in this Preamble.

5. Responsibility To Market Production and To Place Production into Marketable Condition (§ 1206.146)

Public Comment: Although ONRR did not modify the wording in this section, several commenters argue that our proposal eliminates separately defined requirements for processed and unprocessed gas and replaces them with a consolidated marketable condition requirement. This, commenters argue, may result in the lessee being required to place processed gas in marketable condition twice—once as gas and again as residue gas.

ONRR Response: The regulations have always required the lessee to put its production into marketable condition at no cost to the Federal government. This requirement remains unchanged, as does a lessee's duty to put its production into marketable condition.

6. Valuation determination requests (§ 1206.148)

Guidance and Determinations: ONRR clarified how a lessee may request a valuation determination from us. We addressed comments pertaining to guidance and determinations in § 1206.108. For the reasons discussed in response to comments, we deleted the words "or guidance" from the title and paragraph (a) of this section.

7. Accounting for Comparison (§ 1206.151)

ONRR proposed to move the current provisions under § 1206.155 to proposed § 1206.151 and requested comments regarding whether or not to retain the requirement to perform accounting for comparison (dual accounting) for gas produced from Federal leases.

Public Comment: Industry and State commenters supported removing the Federal dual accounting provision from the regulations. Commenters stated that, because residue gas is now valued based on the first arm's-length sale or index-based option, the criteria that triggered dual accounting, a non-arm's-length sale of residue gas after processing, is no longer valid.

STRAC agreed that, under current market conditions, accounting for comparison was no longer necessary, but they questioned how ONRR would respond to potential changes in the gas market in the future.

ONRR Response: We removed the requirement to perform accounting for comparison for gas produced from Federal leases from the final rule. We agree that the gas valuation method under § 1206.142 renders accounting for comparison for Federal gas production unnecessary. Should significant changes in the gas market occur in the future, we will revisit the need for Federal dual accounting in a future rulemaking. Further, § 1206.140(c) recognizes the primacy of lease terms over regulations and, should the terms of a lease require dual accounting, lessees are clearly subject to the dual accounting requirement.

8. General Transportation Allowance Requirements (§ 1206.152)

Subsea gathering: ONRR added a new provision stating that you may not take a transportation allowance for the movement of gas produced on the OCS from the wellhead to the first platform. This addition, along with the changes to the definition of gathering, rescinds the Deep Water Policy. We addressed comments pertaining to this issue, which we detail in § 1206.110, in this Preamble.

Fifty-percent allowance cap and retroactive change: ONRR eliminated the regulation allowing us to approve transportation allowances in excess of 50 percent of the value of a lessee's gas production. Any prior approvals will terminate on the date when the rule becomes final. We addressed comments pertaining to these issues, which we detail in § 1206.110, in this Preamble.

Eliminating transportation factors: Previously, ONRR allowed lessees to net transportation from their gross proceeds when the lessees' arm's-length contract reduced the price of the gas by a transportation factor. We eliminated this provision and, instead, require lessees to report such costs as a separate entry on Form ONRR–2014. We addressed comments pertaining to this issue, which we detail in § 1206.110, in this Preamble.

Misconduct: ONRR added a new definition for the term "misconduct." We addressed comments pertaining to this issue, which we detail in § 1206.20, in this Preamble.

Default: We addressed comments pertaining to the "default provision" paragraph, which we detail in § 1206.101, in this Preamble.

Unreasonably high transportation costs: We addressed comments pertaining to this issue, which we detail in § 1206.104, in this Preamble.

9. Determination of Transportation Allowances for Arm's-Length Transportation Allowances (§ 1206.153)

Pipeline losses: We addressed comments pertaining to this issue, which we detail in § 1206.111, in this Preamble.

In the proposed rule, we removed the provision in the previous regulations under § 1206.157(b)(5). We neglected to remove regulatory language in proposed § 1206.153(b)(7). Therefore, in this final rule, we deleted, "or ONRR approves your use of a FERC or State regulatory-approved tariff as an exception from the requirement to calculate actual costs under § 1206.154(l) of this subpart."

Written contracts: We added a new provision stating that we will determine transportation allowances if lessees do not have a written contract for the arm's-length transportation of gas. We addressed comments pertaining to this issue, which we detail in § 1206.104, in this Preamble.

Eliminating transportation factors: Previously, we allowed lessees to net transportation from their gross proceeds when the lessees' arm's-length contract reduced the price of the gas by a transportation factor. We eliminated this provision and alternatively require lessees to report such costs as a separate entry on Form ONRR–2014. We addressed comments pertaining to this issue, which we detail in § 1206.110, in this Preamble.

Boosting: Under paragraph (c)(8), we specify that the costs of boosting residue gas are not allowable costs of transportation.

Public Comment: An industry commenter argued that this new provision effectively requires the unbundling of arm's-length transportation agreements. Industry also argues that the additional disallowance of boosting residue gas in this section and in § 1202.151(b) is either redundant or results in the lessee having to pay for some marketable condition costs twice for processed gas. Industry states that boosting residue gas is part of plant costs, and it is not associated with a transportation system or transportation allowance.

An industry commenter suggested that eliminating the proposed boosting language in paragraph (c)(8) will ensure consistency in product valuation for all natural gas, whether processed, unprocessed, conventional, or coal bed methane and all plants (cryogenic, lean oil absorption, refrigeration, and CO_2 removal). According to the commenter, elimination of the boosting language will also ensure proper treatment involving leases that produce at a pressure above the marketable condition requirement or for offshore leases where the gas leaves the production platform at or above the marketable condition pressure by requiring the gas be placed into marketable condition only once.

ONRR Response: Current regulations and case law make clear that the cost incurred—including any fuel used—to boost gas (such as compress residue gas after processing) is not a deductible cost of processing or transportation (30 CFR 1202.151(b); *see also Devon Energy Corporation* v. *Kempthorne,* 551 F.3d 1030 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 86 (2009), (finding that boosting is not deductible even if gas is in marketable condition before entering a gas processing plant)). Yet a number of members of industry continue to deduct costs incurred to boost residue gas as either a processing or a transportation allowance, and they argue that it is proper to do so. The inclusion of paragraph (c)(8) reinforces current regulations and case law and therefore we retained it in the final rule.

10. Determination of Transportation Allowances for Non-Arm's-Length Transportation Contracts (§ 1206.154)

Pipeline losses: Under paragraph (c)(2)(ii), we eliminated the provision that allows lessees to deduct the costs of pipeline losses, both actual and theoretical, under non-arm's-length transportation situations. We addressed comments pertaining to this issue, which we detail in § 1206.111, in this Preamble.

BBB bond rate: We reduced the multiplier on any remaining undepreciated capital costs from 1.3 to 1.0 times the Standard & Poor's BBB bond rate. We addressed comments pertaining to this issue, which we detail in § 1206.112, in this Preamble.

FERC or state-regulatory-agency approved tariffs: We removed the provisions allowing a lessee with a non-arm's-length contract to apply for an exception to use FERC or State-regulatory-agency approved tariffs as an exception from the requirements to calculate actual costs.

Public Comment: Several companies and industry trade groups opposed removing the provision, stating that it lacked justification. One commenter stated, "Many of these situations involve affiliated pipelines where obtaining the information to do these calculations would be problematic and burdensome due to the governmental restrictions placed on pipeline companies in sharing information with shippers.''

ONRR Response: Lessees may deduct their reasonable actual costs of transportation under this section. The burden lies with the lessee to calculate these reasonable actual costs of transportation. We removed this rarely-used provision to apply for an exception to create consistency with the Federal oil valuation regulations and promote a more consistent application of the actual cost allowance method.

11. Reporting Requirements for Arm's-Length Transportation Contracts (§ 1206.155)

Eliminating transportation factors: Eliminating transportation factors will require lessees to report any transportation costs embedded in an arm's-length contract as a separate line entry on Form ONRR–2014. We addressed comments pertaining to this issue, which we detail in § 1206.115, in this Preamble.

12. Reporting Requirements for Arm's-Length Transportation Contracts (§ 1206.156)

In the proposed rule, we removed the provision in the previous regulations under § 1206.157(b)(5). We neglected to remove regulatory language in proposed § 1206.156(d). Therefore, in this final rule, we deleted this paragraph.

13. Processing Allowances (§ 1206.159)

We eliminated the regulation allowing us to approve processing allowances in excess of 66⅔ percent of the value of a lessee's gas production. Any prior approvals will terminate on the date when the rule becomes final. We addressed issues related to prior approval terminations, which we detail in § 1206.110, in this Preamble.

Public Comment: We received comments from States and public interest groups generally supporting eliminating ONRR approval to exceed the 66⅔-percent allowance cap on processing allowances. However, a State commenter asserted that the 66⅔-percent cap, itself, was too broad. A State suggested that ONRR calculate allowance caps for each State and use a percentage based on the average processing costs in each State over a ten-year period. A State commenter suggested that ONRR update and post such percentages on its Web page.

ONRR received comments from companies and industry trade groups opposing the proposed rule's elimination of ONRR approval to exceed a 66⅔-percent limitation on processing allowances. These commenters generally stated that the right to request approval to exceed the 66⅔-percent limitation needs to be reinstated because its removal denies a lessee the ability to deduct all of its actual, reasonable, and necessary processing costs when those costs exceed 66⅔ percent. The commenters believe that this is especially true when the physical make-up of the gas warrants complex plant designs that result in higher costs. Last, commenters take issue with ONRR terminating any approval that it previously issued for a lessee to exceed the 66⅔-percent limitation.

ONRR Response: The comments regarding the 66⅔-percent processing allowance mirror the comments that we received for the 50-percent limitation on transportation allowances for oil. Please refer to our comments regarding the ''Fifty-percent allowance cap,'' which we detail in § 1206.110, in this Preamble.

Extraordinary processing allowances and retroactive changes: We eliminated the provision that allows a lessee to request an extraordinary processing cost allowance. We previously allowed lessees to deduct processing costs up to 99 percent of the value of the gas plant products extracted *and* up to 50 percent of the value of the residue gas. This final rule also terminates the two existing extraordinary processing cost allowance approvals. We addressed issues related to the prior approval terminations, which we detail in § 1206.110, in this Preamble.

Public Comment: Industry commenters and a State commented that ONRR should retain the extraordinary processing cost allowance provision and argued that ONRR failed to provide specific evidence that circumstances or improvements in technology have changed enough to warrant the termination of the two existing approvals.

ONRR Response: The Department added the extraordinary processing cost allowance provision to the 1988 regulations to account for the costs of processing unique gas streams based on the technology available at that time. The Department has not approved an extraordinary processing cost allowance since 1996, and we maintain that the markets and the technology have changed sufficiently such that this provision and these approvals are no longer necessary.

Default: In drafting this final rule, we did not include the default provision in this section. We intended to include the default provision here as evidenced by our discussion of the default provision in the economic analysis of the proposed rule. Therefore, we added the default provision in § 1206.159(e), which applies to processing allowances calculated under §§ 1206.160 and 1206.161. We addressed comments pertaining to the ''Default Provision'' paragraph, which we detail in § 1206.101, in this Preamble.

14. Processing Allowances Under an Arm's-Length Contract (§ 1206.160)

Unreasonably high processing costs: We moved the requirements for non-arm's-length processing allowances to a separate § 1206.161. Because the requirements for determining processing allowances under an arm's-length contract are essentially the same as those for determining transportation allowances under an arm's-length contract, we made the same changes to processing allowances in this section as those that we made for arm's-length transportation allowances. Newly added paragraph (c) applies if you have no written contract for arm's-length processing of gas. In that case, we will determine your processing allowance under § 1206.144. We addressed comments pertaining to this general issue, which we detailed under § 1206.104, in this Preamble.

Misconduct: We added a new definition for the term misconduct. We addressed comments pertaining to this issue, which we detailed under § 1206.20, in this Preamble.

Default: We addressed comments pertaining to the ''default provision,'' which we detail under § 1206.101, in this Preamble. In conjunction with our additions in § 1206.159(e) explained above, and to make this section consistent with the transportation allowances sections, we deleted paragraph (a)(3).

D. Specific Comments on 30 CFR Part 1206—Product Valuation, Subpart F—Federal Coal

1. Calculating Royalty Value for Coal I or My Affiliate Sell(s) Under an Arm's-Length or Non-Arm's-Length Contract (§ 1206.252)

Index prices for coal lessees that do not sell under arm's-length contracts: In contrast to the Federal oil and gas valuation regulations, the coal regulations do not allow lessees that do not sell their coal under arm's-length contracts to value their coal based on index prices.

Public Comment: ONRR received comments from industry trade groups, public interest groups, individual commenters, and companies suggesting that ONRR provide coal lessees who do not sell coal under arm's-length contracts the option of valuing coal based on index prices, similar to the options for oil and gas lessees. The commenters believe that using an index price would provide simplicity, predictability, and transparency to the value of coal not sold under arm's-length contracts. ONRR received a comment from a Tribe indicating that it would be willing to accept index prices as a floor value of coal if there is a reliable index. Several commenters proposed that ONRR could generate an index to value coal not sold at arm's-length.

ONRR Response: We appreciates the comments, but declined to provide lessees who do not sell their coal under arm's-length contracts the option to use index prices to value their coal. As mentioned in the "General Comments" section, we are not aware of any published index prices for coal that cover a wide array of coal production. Currently, there are few, if any, indexes for coal, and they are not as widely used as they are for oil and gas. Also, although the existing indexes vary depending on MMBtu content, they do not take into account other variations in the quality of coal, such as ash or sulfur content.

As to the comments that we should generate an index price for lessees to use, we decline to do so at this time. First, as mentioned above, there are no reliable indexes for coal like there are for oil and gas, making it difficult for us to create index-based prices similar to those used in our Indian oil and gas regulations. Second, if we use arm's-length sales from the royalty reports that we receive, we risk divulging proprietary data. We will monitor the coal market and may be open to considering an index-based valuation option if the indexes become viable in the future.

First arm's-length sales: Consistent with how we require lessees to value other commodities, we are requiring lessees to value non-arm's-length dispositions of Federal coal at the first arm's-length sale.

Public Comment: ONRR received numerous comments on our proposal to remove the benchmarks and, instead, value coal at the first arm's-length sale. Many industry commenters petitioned ONRR to retain the previous rule's benchmark system to value coal sold under non-arm's-length contracts. Some commenters felt that valuing coal at the first arm's-length sale was unnecessarily complex. The commenters stated that using the first arm's-length sale as value may require the lessee to use international or electricity sales as the basis of value, which does not reflect the value of coal sold at the lease. Instead, some commenters generally expressed a view that the previous rule's benchmark system, or some modification thereof, would be a better option to determine value. Some commenters felt that the first benchmark, which requires lessees to compare their non-arm's-length sales with arm's-length sales in the same field or area, is the appropriate measure of value for coal not sold at arm's-length. In contrast, other commenters felt that the proposed rule did not go far enough. Instead, these commenters recommended that ONRR value the coal based on its final—not its first—arm's-length sale.

ONRR Response: The values established in arm's-length transactions are the best indication of market value. There is ample evidence that arm's-length sales provide a consistent and accurate measure of all commodities for which we collect royalties. We found that the benchmarks were difficult to use in practice. There have been disputes over comparable sales, which benchmark to use, and how to properly apply those benchmarks. To address these difficulties, we simplified the rule by requiring lessees to value coal based on the first arm's-length sale.

Previously, when lessees sold coal under a non-arm's-length contract, the regulations required the lessee to use the first applicable "benchmark" to establish value. The first benchmark was the gross proceeds accruing to the lessee under its non-arm's-length sale, provided those gross proceeds were comparable to the gross proceeds that accrued to other producers not affiliated with the lessee under arm's-length sales of like-quality coal in the same area. To compare such sales, the lessee looked at prices, timing, markets, quality, and quantity of coal. The second benchmark was prices reported to a public utility commission. The third was prices reported to the Energy Information Administration (EIA) of the Department of Energy. The fourth benchmark required the lessee to use other relevant matters, including spot market prices, or other information concerning the particular lease operation or salability of the coal. The fifth benchmark was a netback method.

Although many commenters advocated for the first benchmark, industry and ONRR found it difficult to implement this provision. Acquiring arm's-length contracts to compare with the lessee's gross proceeds was challenging and, at times, impossible for lessees. Lessees cannot use their or their affiliates' comparable sales. Only in rare circumstances did the lessee have access to its competitor's information regarding the price that the competitor receives for its coal. Further, we cannot obtain or verify contracts for comparable-quality coal sold from fee or State lands. Industry and ONRR also found that it was difficult to ascertain definitively which arm's-length coal sales were comparable and which ones were not. Based on our experience, arm's-length sales are a superior indicator of value to the remaining benchmarks.

Valuing coal sold by coal cooperatives: Section 1206.252(c) addresses sales by coal cooperatives to their members or between members. In keeping with our intent to value commodities, whenever possible, at their first arm's-length sale, we provided a definition of the term "*coal cooperatives*" in § 1206.20 and addressed sales by coal cooperatives to their members or between members in this section. Principally, coal cooperatives are formed because of some degree of mutual economic or other business interest. Consequently, transactions within coal cooperatives lack the opposing economic interests characteristic of arm's-length sales. Because coal cooperatives engage in non-arm's-length sales to and between members, we require lessees to base the value of their coal at the first arm's-length sale, wherever that may finally occur. In some cases, this may be the sale of electricity generated in a coal-fired plant.

Public Comment: ONRR received comments supporting our distinction of coal cooperatives as engaging in other than arm's-length sales. These commenters expressed concerns that coal producers, logistics companies, and even generators of coal-fired electricity would take advantage of their affiliated status and sell coal to each other at less than market prices, thereby lowering their royalty liabilities. Conversely, numerous commenters objected to our definition of coal cooperatives. These commenters argued that our definition and the application of our rules to coal cooperatives did not accurately reflect the corporate structure of cooperatives, would penalize small producers, and deviates from our intent to value coal at the mine.

ONRR Response: We seek a clear, consistent, and repeatable standard for valuing coal at its true market value. Coal cooperatives of varying forms (and complexity) are, primarily, designed for mutual economic advantage. We share the concerns that some commenters expressed that sales within coal cooperatives may not reflect the true market value of the coal. We require lessees to value coal consistent with other commodities—at their first arm's-length sale between entities with competing economic interests, rather than common interests. We disagree with the comment that the definition of coal cooperatives is "unnecessary." In fact, given the unique institutional nature of cooperatives in the coal industry—corporate relations among mine producers, logistics operations, electric generation, and overseas sales—that is not commonly found in markets for oil and gas, we deemed it imperative to define coal cooperatives for royalty purposes.

Valuing coal based on sales of electricity: In some situations, the lessees do not sell coal but, rather, transfer the coal along a series of non-arm's-length transactions to an affiliated generator of coal-fired electricity, who then sells electricity generated from the coal. We require lessees to base the value of the coal on the value of electricity sold, less applicable deductions for transmission, generation, coal washing, and transportation.

Public Comment: We received numerous comments, both supporting and opposing, using the value of electricity to value coal in cases of no sales or sales within coal cooperatives. Supporters argued that, in cases of no sales or non-arm's-length sales across coal cooperatives, assessing the value of coal as that of the generated electricity gives the most accurate representation of the coal's value. Some of these commenters argued that coal should be valued at the last arm's-length sale of electricity. Opponents argued that valuing coal using electric sales was a violation of the MLA, ignored and oversimplified the complexities of electric markets and contracts, and was administratively burdensome. In addition, they argued that ONRR's reference to geothermal regulations for valuing electricity was outside the scope of coal valuation.

ONRR Response: We disagree with comments asserting that using electric sales to value Federal coal, for royalty purposes, is inconsistent with the MLA. Rather, the MLA expressly provides the Secretary's discretion to determine value: "A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation." 30 U.S.C. 207. This rule simply defines the value of coal.

As previously stated, based on our experience, arm's-length sales are the best indicator of value. Due to the complexity of affiliated interests across coal mining, logistics, and sales that many commenters referenced, the first arm's-length sale could easily be the sale of generated electricity. According to the EIA, in 2014, over 93 percent of coal consumption was used in electric generation nationally.

We require lessees to value coal based on the first arm's-length sale, regardless if that sale is for coal or electricity. However, the rule does allow lessees to deduct costs associated with converting the coal to electricity to arrive at the value of the coal at the lease—not the value of the electricity. We will only use sales of electricity to value coal in situations where the first arm's-length sale is the sale of electric power along a series of no sales or non-arm's-length sales.

2. Determination of Correct Royalty Payments (§ 1206.253)

Default: We added a default valuation provision in § 1206.253 under which we can value a lessee's Federal coal if we decide to do so using the criteria in § 1206.254 or any other provision in these subparts.

Public Comment: Almost unanimously, industry commenters and others who support industry's position objected to the use of ONRR's proposed default provision for coal. Several industry commenters argued against ONRR's ability to determine royalty value when coal is sold for 10 percent less than the lowest reasonable measures of market value. Commenters stated that some companies can negotiate better prices than others based on size and bargaining power.

Several industry trade associations stated that, under its default provision, ONRR could upend reasonable and settled expectations whenever we decide for any reason that it dislikes any given lessee's reported coal valuation. These industry commenters also believe (1) that this provision does not allow ONRR to honor arm's-length contracts and gross proceeds as the basis of valuation as in the past; (2) there is a lack of specific criteria for determining what is reasonable valuation; (3) the default provision should not be used for simple reporting errors; and (4) the default provision is burdensome, an overreach of valuation authority, and creates uncertainty.

Several public interest groups suggested that the default provision should be mandatory and not discretionary. They supported ONRR's proposal to establish a default valuation mechanism, which provides the agency with needed authority to ascertain the value of Federal and Indian coal where the government otherwise would fail to garner a fair return on its resource as the result of a lessee's misconduct. The commenters believe that the sources of information upon which ONRR proposes to base its determination of the coal's value are appropriate and, to the extent that they include publicly accessible information, would promote transparency. The comments from public interest groups stated that, when industry fails to abide by the terms of its commitment to market Federal coal for the mutual benefit of the lessee and the Federal government, thereby depriving the government of royalties on the full market value of its coal, the regulations should eliminate the lessee's privilege to continue to determine its own coal value and royalty payments. A comment from a public interest group stated that hesitancy of invoking this default proposition guts the method's efficacy and limits the extent to which the rule will close the first arm's-length sale loophole.

ONRR Response: We disagree with the commenters' statements that the default provision is a radical departure from our historical valuation policy. The regulatory changes do not alter the underlying principles of the current regulations. For example, nothing in this final rule changes the Department's requirement that, for the purposes of determining royalty, the value of coal produced from Federal leases is determined at or near the lease. And nothing in this final rule modifies or alters the fact that gross proceeds from arm's-length contracts are the best indication of market value.

The default provision addresses valuation situations where circumstances result in the Secretary's inability to reasonably determine the correct value of production. Such circumstances include, but are not limited to, (1) the lessee's failure to provide documents; (2) the lessee's misconduct; (3) the lessee's breach of the duty to market; or (4) any other situation that significantly compromises the Secretary's ability to reasonably determine the correct value. The mineral statutes and lease terms give the Secretary the authority and considerable discretion to establish the reasonable value of production by using a variety of discretionary factors and any other information that the Secretary determines is relevant. The default provision simply codifies the Secretary's authority to determine the value of production for royalty purposes and specifically enumerates when, where, and how the Secretary will use that discretion.

Under this new rule, we will not second-guess arm's-length contracts to any greater or lesser degree than we have historically. We have never tacitly accepted values received under arm's-length contracts. We analyze all types of sales contracts in our reviews to validate proper value and deductions.

The criteria that we will use to establish a royalty value under the default provision is the same basic criteria that we base all royalty values upon. Further, we specifically list these criteria in the coal regulations. Factors that we could consider if we decide that we will determine value for royalty purposes under the default provision are clearly delineated and may include, but would not be limited to, (1) the value of like-quality coal from the same mine, nearby mines, same region, or other regions, or washed in the same or nearby wash plant; (2) public sources of price or market information that we deem reliable, including but not limited to, the price of electricity; (3) information available to us and information reported to us, including but not limited to, on the Solid Minerals Production and Royalty Report (Form ONRR–4430); (4) costs of transportation or washing, if we determine that they are applicable; or (5) any other information that we deem relevant regarding the particular lease operation or the salability of the coal.

3. Determination of Coal Value for Royalty Purposes (§ 1206.254)

Default: ONRR added a default valuation provision allowing us to value your coal under this section or any other provision in this subpart F. We address comments pertaining to the default provision, which we detail in § 1206.253, in this Preamble.

4. Valuation Determination Requests (§ 1206.258)

Guidance and Determinations: ONRR clarified how a lessee may request a valuation determination from us. We addressed comments pertaining to guidance and determinations in § 1206.108 of this Preamble. For the reasons that we discussed in response to comments, we deleted the words "or guidance" from the title and paragraph (a) of this section.

5. General Transportation Allowance Requirements (§ 1206.260)

This section contains the requirements of the previous § 1206.261. This section also consolidates provisions applicable to both arm's-length and non-arm's-length transportation in the previous regulations and clarifies that you do not need our approval to report a transportation allowance for arm's-length or non-arm's-length transportation costs that you incur. Paragraph (c) explains in which circumstances you cannot take an allowance. Finally, we added paragraph (g), containing the default provision, which includes the requirements of previous paragraphs 1206.262(a)(2) and 1206.262(a)(3) regarding additional consideration, misconduct, and breach of the duty to market.

Fifty-percent allowance cap: In the preamble of the proposed rule, we solicited comments on whether or not we should impose a 50-percent cap on coal transportation allowances.

Public Comment: ONRR received several comments from public interest groups, the public, and one individual commenter maintaining that ONRR should cap or eliminate transportation allowances. Commenters supporting a 50-percent cap on transportation suggested that coal transportation allowances should be in line with the oil and gas transportation regulations. Several commenters suggested that ONRR should use an index or a published common carrier rate to establish the cost of transportation.

Local businesses, companies, and industry trade groups opposed any type of cap on transportation allowances, stating that the costs of transporting coal are significant and the corresponding deductions are critical to maintain economic operations. Companies and industry trade groups argued that transportation allowances were the best way to establish the value of coal at the mine where the lessee sells coal in a distant market. Further, industry trade groups opposed using standard schedules for transportation allowances, stating that transporting coal is subject to unpredictable market variables and that ONRR should use actual costs.

ONRR Response: After careful review of the comments, we will not impose a cap on transportation allowances at this time. We consider the reasonable, actual cost of transporting coal to be the best method for establishing an appropriate allowance when determining coal royalty value and will continue to implement this regulation.

Written contracts: ONRR added a new provision stating that we will determine transportation allowances if lessees do not have a written contract for the arm's-length transportation of coal. We addressed comments pertaining to this issue, which we discussed in § 1206.104, in this Preamble.

Default provision: ONRR added a default provision under which we may determine your transportation allowance under § 1206.254 if (1) there is misconduct by or between the contracting parties, (2) the total consideration the lessee or its affiliate pays under an arm's-length contract does not reflect the reasonable cost of transportation or because the lessee breached its duty to market coal for the mutual benefit of the lessee and the lessor by transporting coal at a cost that is unreasonably high, or (3) ONRR cannot determine if the lessee properly calculated a transportation allowance for any reason.

Public Comment: Many of the comments from industry and industry trade groups regarding ONRR's potential use of the default provision, as it relates to the transportation of coal, are similar to those put forth for determining the allowances for oil or gas. Commenters believe that ONRR's use of a 10-percent variance above the highest reasonable measure of transportation standard is arbitrary, capricious, and unnecessary. Some commenters representing States' interests, however, believe that ONRR should include stronger regulatory language that requires ONRR to use the default method when the 10-percent variance is reached.

ONRR Response: Please refer to our response to § 1206.253 for a more detailed explanation of the default provision. The default provision is a well-conceived valuation tool that the Secretary will use to determine the correct amount of transportation deductions for coal. The 10-percent variance that we *may* use in our analysis of transportation transactions is nothing more than a tolerance to help determine a proper transportation allowance. In past and current compliance reviews and audit procedures, we have always used tolerances to reflect what is reasonable in any given market, at any given time. Our use of the default provision under the final valuation regulations is a continuation of current practice. We will continue to determine transportation costs that industry incurs on their own merits based on reasonable actual costs allowable under the regulations.

Misconduct: ONRR added a new definition for the term "*misconduct.*" We addressed comments pertaining to this issue, which we detail in § 1206.20, in this Preamble.

6. Determining Non-Arm's-Length Transportation (§ 1206.262)

ONRR intended for the paragraphs addressing the BBB bond rate to be the same as those in the oil and gas provisions. Therefore, we deleted paragraph (k)(3).

7. General Washing Allowance Requirements (§ 1206.267)

ONRR added this section to contain the requirements of previous § 1206.258. We clarified that you do not need prior approval for reporting an allowance for the costs to wash coal and you must allocate washing costs attributable to each Federal lease. We also added that you cannot take an allowance for washing lease production that is not royalty-bearing, can only claim the costs of washing as an allowance when you sell the washed coal, and added the same default provision as that for the Federal oil, gas, and coal transportation regulations discussed in §§ 1206.110(f), 1206.152(g), and 1206.260(g).

Fifty-percent washing allowance cap: In the preamble of the proposed rule, ONRR solicited comments on whether we should impose a 50-percent cap on washing allowances.

Public Comment: ONRR received several comments from public interest groups, the general public, and a State maintaining that ONRR should not allow any deductions for the costs of washing coal because they are costs to place the coal in to marketable condition. Some of those same commenters, however, stated that, if ONRR continues to allow the costs of washing coal, they support a 50-percent cap on those allowances. Some commenters suggested that an ONRR-created index should be developed to determine washing allowances, while others similarly stated that, if ONRR does allow the washing allowances, the allowances should be fixed in advance.

An industry trade group opposed any cap on washing allowances, stating that the costs of washing coal are significant and the corresponding deductions are critical to maintain economic operations. It also stated that the costs of washing coal must be deductible from gross proceeds in order to maintain royalty on the value of coal at the lease rather than on an inflated basis.

ONRR Response: After careful review of the comments, we will not impose a cap on washing allowances at this time and will continue the practice of allowing the deduction of the costs of washing coal. The reasonable, actual cost of coal washing is the preferred method to arrive at an appropriate allowance when determining coal royalty value, and we will continue to implement this regulation.

Written contracts: ONRR added a new provision stating that we will determine washing allowances if lessees do not have a written contract for the arm's-length washing of coal. We addressed comments pertaining to this issue, which we detail in § 1206.104, in this Preamble.

Default provision: ONRR added a default provision under which we may determine your washing allowance under § 1206.254 if (1) there is misconduct by or between the contracting parties; (2) the total consideration that the lessee or its affiliate pays under an arm's-length contract does not reflect the reasonable cost of washing or because the lessee breached its duty to market coal for the mutual benefit of the lessee and the lessor by washing coal at a cost that is unreasonably high; or (3) we cannot determine if the lessee properly calculated a washing allowance for any reason.

Public Comment: Many of the comments from industry and industry trade associations regarding ONRR's potential use of the default provision, as it relates to the washing of coal, are similar to those put forth for determining the allowances for oil or gas. Commenters believe that ONRR's use of a 10-percent variance above the highest reasonable measure of washing standard is arbitrary, capricious, and unnecessary. Some commenters representing States' interests, however, believe that ONRR should include stronger regulatory language that requires ONRR to use the default method when the 10-percent variance is reached.

ONRR Response: We provide a detailed response to the default provision topic in this Preamble under § 1206.253. The default provision is a well-conceived valuation tool that the Secretary will use to determine the correct amount of washing deductions for coal. The 10-percent variance that we *may* use in our analysis of washing transactions is nothing more than a tolerance to help determine a proper washing allowance. In past and current compliance reviews and audit procedures, we have always used tolerances to reflect what is reasonable in any given market, at any given time. Our use of the default provision under the final valuation regulations is a continuation of current practice. We will continue to determine washing costs that industry incurs on their own merits based on reasonable, actual costs allowable under the regulations.

8. Determining Non-Arm's-Length Washing (§ 1206.269)

ONRR intended for the paragraphs addressing the BBB bond rate to be the same as those in the oil and gas provisions. Therefore, we deleted paragraph (k)(3).

E. Specific Comments on 30 CFR Part 1206—Product Valuation, Subpart J—Indian Coal

1. Purpose and Scope (§ 1206.450)

ONRR replaced the term "Indian allottee" with "individual Indian mineral owner." We made no other substantive changes to this section.

Public Comment: A Tribe proposed adding language that clarifies that an operating agreement between the lessor and lessee is also considered a lease.

ONRR Response: We clearly defined the term "*lease*" in § 1206.20 and find it unnecessary to add additional language here.

2. Valuation Determination Requests (§ 1206.458)

Guidance and Determinations: Under paragraph (a), a lessee may request a valuation determination or guidance from ONRR regarding any coal produced. Paragraph (a) provides that the lessee's request for a determination must (1) be in writing, (2) identify all leases involved, (3) identify all interest owners in the leases, (4) identify the operator(s) for those leases, and (5) explain all relevant facts. In addition, under paragraph (a), a lessee must provide (1) all relevant documents, (2) its analysis of the issue(s), (3) citations to all relevant precedents (including adverse precedents), and (4) its proposed valuation method.

In response to a lessee's request for a determination, we may (1) decide that we will issue guidance, (2) inform the lessee in writing that we will not provide a determination or guidance, or (3) request that the ASPMB issue a determination.

Paragraphs (b)(3)(i) and (ii) identify situations in which ONRR and the Assistant Secretary typically do not provide a determination or guidance, including, but not limited to, requests for guidance on hypothetical situations and matters that are the subject of pending litigation or administrative appeals.

Under paragraph (c)(1), a determination that ASPMB signs binds both the lessee and ONRR unless the Assistant Secretary modifies or rescinds the determination.

Public Comment: A Tribe proposed adding language to paragraph (b)(1) stating that ONRR will consult with the Indian Tribe prior to issuing a decision.

ONRR Response: We routinely consult with Tribes and find it unnecessary to add language to this paragraph.

We addressed additional comments pertaining to guidance and determinations in § 1206.108. For the reasons discussed in response to comments, we deleted the words, "or guidance" from the title and paragraph (a) of this section.

3. Determination of Non-Arm's-Length Transportation (§ 1206.462)

ONRR intended for the paragraphs addressing the BBB bond rate to be the same as those in the oil and gas provisions. Therefore, we deleted paragraph (k)(3).

4. Determination of Arm's-Length Washing (§ 1206.467)

Default: ONRR addressed comments pertaining to the default provision for Federal coal, which we discuss in § 1206.267, in this Preamble.

5. Determination of Non-Arm's-Length Washing (§ 1206.469)

ONRR intended for the paragraphs addressing the BBB bond rate to be the same as those in the oil and gas provisions. Therefore, we deleted paragraph (k)(3).

DERIVATION TABLE FOR PART 1206

The requirements of section:	Are derived from section:
	Subpart C
1206.20	1206.101; 1206.151; 1206.251; 1206.451.
1206.101	1206.102.
1206.102	1206.103.
1206.103	1206.104.
1206.106	1206.105.
1206.107	1206.106
1206.108	1206.107.
1206.109	1206.108.
1206.110	1206.109.
1206.111	1206.110.
1206.112	1206.111.
1206.113	1206.112
1206.114	1206.113.
1206.115	1206.114.
1206.116	1206.115.
1206.117	1206.116.
1206.118	1206.117.
	Subpart D
1206.140	1206.150.
1206.141(a)(1)–(3)	1206.152(a)(1).
1206.141(b)(1)–(3)	1206.152(a)(2).
1206.141(b)(4)	1206.152(b)(1)(iv).
1206.142(a)(4)	1206.153(a)(1).
1206.142(b)	1206.153(a)(2).
1206.142(c)	1206.153(b)(1)(i).
1206.143(a)(1) and (b)	1206.152(b)(1)(ii); 1206.153(b)(1)(ii).
1206.143(a)(2)	1206.152(f); 1206.153(f).
1206.143(c)	1206.152(b)(1)(iii); 1206.153(b)(1)(iii).
1206.144	1206.152(c)(1)–(3); 1206.153(c)(1)–(3).
1206.145	1206.152(e)(1) and (2); 1206.153(e)(1) and (2); 1206.157(c)(1)(ii) and (c)(2)(iii); 1206.159(c)(1)(ii) and (c)(2)(iii).
1206.146	1206.152(i); 1206.153(i).
1206.147	1206.152(k); 1206.153(k).
1206.148	1206.152(g); 1206.153(g).
1206.149	1206.152(l); 1206.153(l).
1206.150	1206.154.
1206.151	1206.155.
1206.152(a)	1206.156(a).
1206.152(b)	1206.156(b); 1206.157(a)(2) and (b)(3).
1206.152(c)(1)	1206.157(a)(2) and (b)(4).
1206.152(f)	1206.157(a)(4).
1206.153(b)	1206.157(f).
1206.153(c)	1206.157(g).
1206.154(a)	1206.157(b).
1206.154(e)–(h)	1206.157(b)(2)(i)–(iii).
1206.154(i)	1206.157(b)(2)(iv).
1206.154(i)(3)	1206.157(b)(2)(v).
1206.155	1206.157(c)(1)(i), (ii).
1206.156	1206.157(c)(2)(i)–(iv).
1206.157(a)(1) and (c)	1206.156(d).
1206.157(a)(2) and 1206.158.	1206.157(e).
1206.159(a)(1)	1206.158(a).
1206.159(b)	1206.158(b).
1206.159(c)(1) and (2)	1206.158(c)(1) and (2).
1206.159(d)	1206.158(d)(1).
1206.160	1206.159(a).
1206.161	1206.159(b).

DERIVATION TABLE FOR PART 1206—Continued

The requirements of section:	Are derived from section:
1206.162	1206.159(c)(1).
1206.163	1206.159(c)(2).
1206.164	1206.159(d).
1206.165	1206.159(e).
Subpart F	
1206.250	1206.250.
1206.251	1206.254; 1206.255; 1206.260.
1206.252(d)	1206.258(a); 1206.261(b).
1206.260(a)(1) and (b)	1206.261(a).
1206.260(c)(2)	1206.261(a)(2).
1206.260(d)	1206.261(c)(3).
1206.260(e)	1206.261(c)(1), (c)(2), and (e).
1206.260(f)	1206.262(a)(4).
1206.260(g)	1206.262(a)(2) and (a)(3).
1206.261	1206.262(a)(1).
1206.262	1206.262(b).
1206.263	1206.262(c)(1).
1206.264	1206.262(c)(2).
1206.265	1206.262(d).
1206.266	1206.262(e).
1206.267(a)	1206.258(a).
1206.267(b)(2)	1206.258(c); 1206.260.
1206.267(c)	1206.259(a)(4).
1206.267(d)	1206.259(a)(2) and (a)(3).
1206.267(e)	1206.258(e).
1206.268	1206.259(a)(1).
1206.269	1206.259(b).
1206.270	1206.259(c)(1).
1206.271	1206.259(c)(2).
1206.272	1206.259(d).
1206.273	1206.259(e).
Subpart J	
1206.450	1206.450.
1206.451	1206.453; 1206.454; 1206.459.
1206.460	1206.461(a)(1).
1206.463	1206.461(c).

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

We estimated the costs and benefits that this rule will have on all potentially affected groups: Industry, the Federal Government, Indian lessors, and State and local governments. These amendments that have cost impacts will result in an estimated annual increase in royalty collections. The sum of these amendments that have cost benefits are due to administrative cost savings to industry, not a decrease in royalties due. The net impact of these amendments is an estimated annual increase in royalty collections of between $71.9 million and $84.9 million. This net impact represents a slight increase of between 0.8 percent and 1.0 percent of the total Federal oil, gas, and coal royalties that we collected in 2010. We also estimate that industry will experience reduced annual administrative costs of $3.61 million.

Please note that, unless otherwise indicated, numbers in the following tables are rounded to three significant digits.

A. Industry

The table below lists ONRR's low, mid-range, and high estimates of the costs, by component, that industry will incur in the first year. Industry will incur these costs in the same amount each year thereafter.

SUMMARY OF ROYALTY IMPACTS TO INDUSTRY

Rule provision	Low	Mid	High
Gas—to replace benchmarks			
Affiliate resale	$0	$2,010,000	$4,030,000
Index	11,300,000	11,300,000	11,300,000
NGLs—to replace benchmarks			
Affiliate resale	0	256,000	510,000
Index	1,200,000	1,200,000	1,200,000
Gas transportation limited to 50%	4,170,000	4,170,000	4,170,000
Processing allowance limited to 66⅔%	5,440,000	5,440,000	5,440,000
POP contracts limited to 66⅔% processing allowance	0	0	0
Extraordinary processing allowance	18,500,000	18,500,000	18,500,000

SUMMARY OF ROYALTY IMPACTS TO INDUSTRY—Continued

Rule provision	Low	Mid	High
BBB bond rate change for gas transportation	1,640,000	1,640,000	1,640,000
Eliminate deep water gathering	17,400,000	20,500,000	23,600,000
Oil transportation limited to 50%	6,430,000	6,430,000	6,430,000
Oil and gas line losses	4,571,000	4,571,000	4,571,000
BBB bond rate change for oil transportation	2,380,000	2,380,000	2,380,000
Coal—to non-arm's-length netback & co-op sales	(1,060,000)	0	1,060,000
Total	71,922,000	78,390,000	84,850,000

Note 1: Totals from this table and others in this analysis may not add due to rounding.

Note 2: Lessees may experience a one-time administrative cost to update their systems to comply with this rule. However, because a change would be unique to an individual lessee, ONRR was unable to quantify those one-time costs. Recognizing lessees may have to change their systems, we set the effective date of this rule to 180 days from the date of publication.

ONRR identified two rule changes that will benefit industry by reducing their administrative costs. The benefits that industry will realize for each of these components are as follows:

Rule provision	Benefit
Replace benchmarks—Gas & NGLs	$247,000
Eliminate deep water gathering	3,360,000
Total	3,610,000

The table below lists the overall economic impact to industry from the rule changes, based on the mid-range estimate of costs:

Description	Annual (cost)/benefit amount
Cost—All rule provisions	($78,390,000)
Benefit—Administrative savings	3,610,000
Net cost or benefit to industry	(74,780,000)

Cost—Using First Arm's-Length Sale to Value Non-Arm's-Length Sales of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

As discussed above, we will replace the current benchmarks in §§ 1206.152(c) (unprocessed gas) and 1206.152(c) (processed gas) with a methodology that uses the gross proceeds under the lessee's affiliate's first arm's-length sale to value gas for royalty purposes. The lessee also will have the option to elect to pay royalties based on a value using the monthly high index price, less a standard deduction for transportation.

To perform this economic analysis, we first extracted royalty data that we collected on residue gas, unprocessed gas, and coalbed methane (product codes 03, 04, 39, respectively) for calendar year 2010. We chose calendar year 2010 because the Royalty-in-Kind (RIK) volumes were minimal due to the 2010 termination of the RIK program. In previous years, RIK volumes were substantial. Data from RIK production is not representative of industry sales, so we excluded any remaining RIK volumes from our analysis.

We then extracted gas royalty data for non-arm's-length transactions reported with a sales type code of NARM. We also extracted gas royalty data for sales type code POOL because royalty reporters may also use this code to report non-arm's-length transactions. Based on our experience with auditing transactions that use sales type code POOL, we know that only a relatively small portion of them are non-arm's-length. Therefore, we used only 10 percent of the POOL volumes in our economic analysis of the volumes of gas sold non-arm's-length.

Based on our experience auditing production sold under non-arm's-length contracts, we find that industry will incur a royalty increase in the range of 0 to 5 cents per MMBtu under our proposal to use the affiliate's first arm's-length resale to value gas production for royalty purposes. We created a range of potential royalty increases by assuming no royalty increase for the low estimate, 2.5 cents per MMBtu for the mid-range estimate, and 5 cents per MMBtu for the high estimate. We then multiplied the NARM volume and 10 percent of the POOL volume reported to us in 2010 by the potential royalty increases.

The results that we provided below are an estimated cost to industry due to an annual royalty increase of between zero and approximately $8 million. We reduced this estimate by one-half to $4.03 million, assuming lessees whose volumes represent 50 percent of the non-arm's-length sales will choose this option.

	2010 MMBtu (non-rounded)	Royalty increase ($)		
		Low (0 cents)	Mid (2.5 cents)	High (5 cents)
NAL volume	149,348,561	$0	$3,730,000	$7,470,000
10% of POOL volume	11,606,523	0	290,000	580,000
Total	160,955,084	0	4,020,000	8,050,000
50% of non-arm's-length volumes		0	2,010,000	4,030,000

Cost—Using Index Price Option to Value Non-Arm's-Length Sales of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

To estimate the royalty impact of the index-based option, we calculated a monthly weighted average price net of transportation using NARM and 10 percent of the POOL gas royalty data from six major geographic areas with active index prices: The Green River Basin; San Juan Basin; Piceance and Uinta Basins; Powder River and Wind River Basins; Permian Basin; and Offshore Gulf of Mexico (GOM). These six areas account for approximately 95 percent of all Federal gas produced. To calculate the estimated impact, we performed the following steps:

(1) Identified the *Platts Inside FERC* highest reported monthly price for the index price applicable to each area—Northwest Pipeline Rockies for Green River, El Paso San Juan for San Juan, Northwest Pipeline Rockies for Piceance and Uinta, Colorado Interstate Gas for Powder River and Wind River, El Paso Permian for Permian, and Henry Hub for GOM.

(2) Subtracted the transportation deduction that we specified in the proposed rule from the highest index price that we identified in step (1).

(3) Subtracted the average monthly net royalty price reported to us for unprocessed gas from the highest index price for the same month that we calculated in step (2).

(4) Multiplied the royalty volume by the monthly difference that we calculated in step (3) to calculate a monthly royalty difference for each region.

(5) Totaled the difference that we calculated in step (4) for the regions.

Although the index-based methodology resulted in an annual increase in royalties due, the current average royalty prices reported to us were higher than the index-based option for three months in 2010.

We estimate that the cost to industry due to this change will be an increase in royalty collections of approximately $11.3 million annually. This estimate represents a small average increase of approximately 3.6 percent or 14 cents per MMBtu, based on an annual royalty volume of 160,955,084 MMBtu (for NARM and 10 percent POOL reported sales type codes). Because this is the first time that we have offered this option, we don't know how many payors will choose it. We reduced this estimate by one-half, assuming lessees whose volumes represent 50 percent of the non-arm's-length sales will choose this option.

2010 Index analysis	GOM gas	Other gas	Total
Current royalties (rounded to the nearest dollar)	$167,291,148	$435,222,354	$602,513,502
Royalty under index option	180,000,000	445,000,000	625,000,000
Difference	12,700,000	9,780,000	22,500,000
Per unit uplift ($/MMBtu)..	0.297	0.083	0.140
% change	7.06	2.20	3.60
50% of non-arm's-length volumes			11,300,000

Cost—Using First Arm's-Length Sale to Value Non-Arm's-Length Sales of Federal NGLs

Like the valuation changes that we discussed above, for Federal unprocessed, residue, and coalbed methane gas valuation changes, this rule will value processed Federal NGLs based on the first arm's-length sale rather than the current benchmarks. The lessee also will have the option to pay royalties using an index-price value derived from an NGL commercial price bulletin, less a theoretical processing allowance that includes transportation and fractionation of the NGLs. We again used the 2010 NARM and POOL NGL data reported to us for this analysis.

We performed the same analysis for valuation using the first arm's-length sale for Federal unprocessed, residue, and coalbed methane gas, as we discussed above. We identified the non-arm's-length volumes that would qualify for this option (for NARM and 10 percent POOL reported sales type codes) and estimated a cents-per-gallon royalty increase. Based on our experience, the NGLs resale margin is, similar to gas, relatively small, ranging from zero to 3 cents per gallon. Thus, our estimated royalty increase is zero for the low, 1.5 cents per gallon for the mid-range, and 3 cents per gallon for the high range. The results provided below show a mid-range royalty increase of $256,000 using these assumptions, and, again, we reduced them by one-half, assuming lessees whose volumes represent 50 percent of the non-arm's-length sales will choose this option.

	2010 Gallons (rounded to the nearest gallon)	Royalty increase ($)		
		Low (0 cents)	Mid (1.5 cents)	High (3 cents)
NAL volume	6,170,341	$0	$92,600	$185,000
10% of POOL volume	27,913,486	0	419,000	837,000
Total	34,083,827	0	512,000	1,020,000
50% of non-arm's-length volumes		0	256,000	510,000

Cost—Using Index Price Option to Value Non-Arm's-Length Sales of Federal NGLs

Like the Federal unprocessed, residue, and coalbed methane gas changes that we discussed above, lessees also will have the option to pay royalties on Federal NGLs using an index-based value less a theoretical processing allowance that includes transportation and fractionation. We used the same 2010 NARM and POOL transaction data for NGLs for this analysis. We were unable to compare NGLs prices reported on Form ONRR–2014 to those in commercial price bulletins because prices that lessees report on Form ONRR–2014 are one rolled-up price for all NGLs. Conversely, the bulletins price each NGL product (such as ethane and propane) separately. We based our analysis on the royalty changes that will result from the theoretical processing allowance proscribed under this new option.

We chose a conservative number as a proxy for the processing allowance deduction that we will allow for this index option. To determine the cost of this option for NGLs, we calculated the difference between the average processing allowance reported on Form ONRR–2014 and the proxy allowance that we will allow under this option. That difference equaled an increase in value of approximately 7 cents per gallon. We then multiplied the total NAL volume of 34,083,827 gallons reported to us by the 7 cents per gallon, for an estimated royalty increase of $2.4 million. We reduced this number by one-half under the assumption that 50 percent of lessees will choose this option, resulting in a total cost to industry of $1.2 million.

Benefit—Using Index Price Option to Value Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, Coalbed Methane, and NGLs

We expect that industry will benefit by realizing administrative savings if they choose to use the index-based option to value non-arm's-length sales of Federal unprocessed gas, residue gas, coalbed methane, and NGLs. Lessees will know the price to use to value their production, saving the time that it currently takes to calculate the correct price based on the current benchmarks. They also will save time using the ONRR-specified transportation rate for gas and the ONRR-specified processing allowance for NGLs, rather than having to calculate those values themselves.

Of the lessees that we estimated will use this option, we estimated the index-based option will shorten the time burden per line reported by 50 percent to 1.5 minutes for lines that industry electronically submits and 3.5 minutes for lines that they manually submit. We used tables from the Bureau of Labor Statistics (BLS) (*www.bls.gov/oes132011.htm*) to estimate the hourly cost for industry accountants in a metropolitan area. We added a multiplier of 1.4 for industry benefits. The industry labor cost factor for accountants will be approximately $50.53 per hour = $36.09 [mean hourly wage] × 1.4 [benefits cost factor]. Using a labor cost factor of $50.53 per hour, we estimate the annual administrative benefit to industry will be approximately $247,000.

	Time burden per line reported	Estimated lines reported using index option (50%)	Annual burden hours
Electronic reporting (99%)	1.5 min	190,872	4,772
Manual reporting (1%)	3.5 min	1,928	112
Industry labor cost/hour			$50.53
Total benefit to industry			$247,000

Cost—Elimination of Transportation Allowances in Excess of 50 Percent of the Value of Federal Gas

The previous Federal gas valuation regulations limited lessees' transportation allowances to 50 percent of the value of the gas unless they requested and received approval to exceed that limit. This rule eliminated the lessees' ability to exceed that limit. To estimate the costs associated with this change, we first identified all calendar year 2010 reported gas transportation allowances rates that exceeded the 50-percent limit. We then adjusted those allowances down to the 50-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $4.17 million in additional royalties.

Cost—Elimination of Transportation Allowances in Excess of 50 Percent of the Value of Federal Oil

The previous Federal oil valuation regulations limit lessees' transportation allowances to 50 percent of the value of the oil unless they request and receive approval to exceed that limit. This rule eliminates the lessees' ability to exceed that limit. To estimate the costs associated with this change, we first identified all calendar year 2010 reported oil transportation allowance rates that exceeded the 50-percent limit. We then adjusted those allowances down to the 50-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $6.43 million in additional royalties.

Cost—Elimination of Processing Allowances in Excess of 66⅔ Percent of the Value of the NGLs for Federal Gas

The previous Federal gas valuation regulations limit lessees' processing allowances to 66⅔ percent of the value of the NGLs unless they request and receive approval to exceed that limit. This rule eliminates the lessees' ability to exceed that limit. To estimate the cost to industry associated with this change, we first identified all calendar year 2010 reported processing allowances greater than 66⅔ percent. We then adjusted those allowances down to the 66⅔-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $5.44 million in additional royalties.

Cost—POP Contracts now Subject to the 66⅔-percent Processing Allowance Limit for Federal Gas

Lessees with POP contracts currently pay royalties based on their gross proceeds as long as they pay a minimum value equal to 100 percent of the residue gas. Under this rule, we also will not allow lessees with POP contracts to deduct more than the 66⅔ percent of the value of the NGLs. For example, a lessee with a 70-percent POP contract receives 70 percent of the value of the residue gas and 70 percent of the value of the NGLs. The 30 percent of each product that the lessee gives up to the processing plant in the past cannot, when combined, exceed an equivalent value of 100 percent of the NGLs' value. Under this rule, the combined value of each product that the lessee gives up to the processing plant cannot exceed two-thirds of the NGLs' value.

Lessees report POP contracts to ONRR using sales type code APOP for arm's-length POP contracts and NPOP for non-arm's-length POP contracts. Because lessees report APOP sales as unprocessed gas, there are no reported processing allowances for us to analyze, and we cannot determine the breakout between residue gas and NGLs. Lessees do report residue gas and NGLs separately for NPOPs. However, NPOP volumes constitute only 0.02 percent of all of the natural gas royalty volumes that lessees report to us. We deemed the NPOP volume to be too low to adequately assess the impact of this provision on both APOP and NPOP contracts.

Therefore, we decided to examine all reported calendar year 2010 onshore residue gas and NGLs royalty data and assumed that it was processed and that lessees paid royalties as if they sold the residue gas and NGLs under a POP contract. We restricted our analysis to residue gas and NGLs volumes produced onshore because we are not aware of any offshore POP contracts. We first totaled the residue gas and NGLs' royalty value for calendar year 2010 for all onshore royalties. We then assumed that these royalties were subject to a 70-percent POP contract. Based on our experience, a 70/30 split is typical for POP contracts. We calculated 30 percent of both the value of residue gas and NGLs to approximate a theoretical 30-percent processing deduction. We then compared the 30-percent total of residue gas and NGL values to 66⅔ percent of the NGL's value (the maximum allowance under this rule). The table below summarizes these calculations, which we rounded to the nearest dollar:

	2010 Royalty value	70%	30%
Residue gas	$602,194,031	$421,535,822	$180,658,209
NGLs	506,818,440	354,772,908	152,045,532
Total	1,109,012,471	776,308,730	332,703,741
66.67% Limit	337,878,960	(506,818,440 × ⅔)	

Our analysis shows that the theoretical processing deduction for 30 percent of the value of residue gas and NGLs ($333 million) under our assumed onshore POP contract allowance will not exceed the 66⅔-percent cap ($338 million) under this rule and, thus, we estimate that this change will be revenue-neutral.

Cost—Termination of Policy Allowing Transportation Allowances for Deep Water Gathering Systems for Federal Oil and Gas

The Deep Water Policy that we discuss above allowed companies to deduct certain expenses for subsea gathering from their royalty payments, even though those costs do not meet our definition of transportation. This final rule rescinds and supersedes the Deep Water Policy, and lessees will pay royalties under these valuation regulations applicable to Federal oil and gas transportation allowances, prospectively. To analyze the cost impact to industry of rescinding this policy, we used data from BSEE's ArcGIS Technical Information Management System database to estimate that 113 subsea pipeline segments serving 108 leases currently qualify for an allowance under the policy. We assumed that all segments were the same—in other words, we did not take into account the size, length, or type of pipeline. We also considered only pipeline segments that were in active status and leases in producing status for our analysis. To determine a range (shown in the tables below as low, mid, and high estimates) for the cost to industry, we estimated a 15-percent error rate in our identification of the 113 eligible pipeline segments, resulting in a range of 96 to 130 eligible pipeline segments.

Historical ONRR audit data is available for 13 subsea gathering segments serving 15 leases covering time periods from 1999 through 2010. We used these data to determine an average initial capital investment in pipeline segments. We used the initial capital investment amount to calculate depreciation and a return on undepreciated capital investment (also known as the Return on Investment or ROI) for the eligible pipeline segments. We calculated depreciation using a straight-line depreciation schedule based on a 20-year useful life of the pipeline. We calculated ROI using 1.0 times the average BBB Bond rate for January 2012, which was the most recent full month of data when we performed this analysis. We based the calculations for depreciation and ROI on the first year when a pipeline was in service.

From the same audit data, we calculated an average annual Operating and Maintenance (O&M) cost. We increased the O&M cost by 12 percent to account for overhead expenses. Based on experience and audit data, we assumed that 12 percent is a reasonable increase for overhead. We then decreased the total annual O&M cost per pipeline segment by 9 percent because an average of 9 percent of offshore wellhead oil and gas production is water, which is not royalty bearing. Finally, we used an average royalty rate of 14 percent, which is the volume weighted average royalty rate for all non-Section 6 leases in the GOM. Based on these calculations, the average annual allowance per pipeline segment is approximately $226,000. This represents the estimated amount per pipeline segment that we will no longer allow a lessee to take as a transportation allowance based on our rescission of the Deep Water Policy in this rule.

The total cost to industry will be the $226,000 annual allowance per pipeline segment that we will disallow under this rule times the number of eligible segments. To calculate a range for the total cost, we multiplied the average annual allowance by the low (96), mid (113), and high (130) number of eligible segments. The low, mid, and high annual allowance estimates that we will disallow are $21.8 million, $25.6 million, and $29.5 million, respectively.

Of currently eligible leases, 42 out of 108, or about 40 percent, qualify for deep water royalty relief. However, due to varying lease terms, royalty relief programs, price thresholds, volume thresholds, and other factors, we estimated that only half of the 42 leases eligible for royalty relief (20 percent) actually received royalty relief. Therefore, we decreased the low, mid, and high estimated annual cost to industry by 20 percent. The table below shows the estimated royalty impact of this section of this rule based on the allowances that we will no longer allow under this rule.

	Low	Mid	High
Estimated royalty impact	$17,400,000	$20,500,000	$23,600,000

Benefit—Termination of Policy Allowing Transportation Allowances for Deep Water Gathering Systems for Offshore Federal Oil and Gas

We estimate that the elimination of transportation allowances for deep water gathering systems will provide industry with an administrative benefit because they will no longer have to perform this calculation. The cost to perform this calculation is significant because industry has often hired outside consultants to calculate their subsea transportation allowances. Using this information, we estimated that each company with leases eligible for transportation allowances for deep water gathering systems will allocate one full-time employee annually to perform this calculation if they use consultants or perform the calculation in-house. We used the BLS to estimate the hourly cost for industry accountants in a metropolitan area [$36.09 mean hourly wage] with a multiplier of 1.4 for industry benefits to equal approximately $50.53 per hour [$36.09 × 1.4 = $50.53]. Using this labor cost per hour, we estimate that the annual administrative benefit to industry will be approximately $3,360,000.

	Annual burden hours per company	Industry labor cost/hour	Companies reporting eligible leases	Estimated benefit to industry
Deep water Gathering.	2,080	$50.53	32	$3,360,000

Cost—Elimination of Extraordinary Cost Gas Processing Allowances for Federal Gas

As we discussed above, we eliminated the provision in the previous regulations that allow a lessee to request an extraordinary processing cost allowance and to terminate any extraordinary cost processing allowances that we previously granted. We granted two such approvals in the past, so we know the lease universe that is claiming this allowance and were able to retrieve the processing allowance data that lessees deducted from the value of residue gas produced from the leases. We then calculated the annual total processing allowance that lessees have claimed for 2007 through 2010 for the leases at issue. We then averaged the yearly totals for those four years to estimate an annual cost to industry of $18.5 million in increased royalties.

Cost—Decrease Rate of Return Used to Calculate Non-Arm's-Length Transportation Allowances From 1.3 to 1 Times the Standard and Poor's BBB Bond Rate for Federal Oil and Gas

For Federal oil transportation, we do not maintain or request data identifying if transportation allowances are arm's-length or non-arm's-length. However, based on our experience, a large portion of GOM oil is transported through lessee-owned pipelines. In addition, many onshore transportation allowances include costs of trucking and rail, and, most likely, this change will not impact those. Therefore, to calculate the costs associated with this change, we assumed that 50 percent of the GOM transportation allowances are non-arm's-length and 10 percent of transportation allowances everywhere else (onshore and offshore other than the GOM) are non-arm's-length. We also assumed that, over the life of the pipeline, allowance rates are made up of one-third rate of return on undepreciated capital investment, one-third depreciation expenses, and one-third operation, maintenance, and overhead expenses. These are the same assumptions that we made when analyzing changes to both the Federal oil and Federal gas valuation rules in 2004.

In 2010, the total oil transportation allowances that Federal lessees deducted were approximately $60 million from the GOM and $11 million from everywhere else. Based on these totals and our assumptions about the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return will be approximately $10,000,000 for the GOM ($60,000,000 × ⅓ × 50% = $10,000,000) and $367,000 ($11,000,000 × ⅓ × 10% = $367,000) for the rest of the country. Therefore, we estimate that decreasing the basis for the rate of return by 23 percent will result in decreased yearly oil transportation allowance deductions of approximately $2,380,000 ($10,367,000 × 0.23 = $2,380,000). Thus, we estimate that the net cost to industry as a result of this change will be an approximately $2,380,000 increase in royalties due.

With respect to Federal gas, like oil, we do not maintain or request information on whether gas transportation allowances are arm's-length or non-arm's-length. However, unlike oil, it is not common for GOM gas to be transported through lessee-owned pipelines. Therefore, we assumed that only 10 percent of all gas transportation allowances are non-arm's-length and made no distinction between the GOM and everywhere else. All other assumptions for natural gas are the same as those we made for oil above.

In 2010, the total gas transportation allowances that Federal lessees deducted were approximately $214 million. Based on that total and our assumptions regarding the makeup of the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return will be approximately $7.13 million ($214,000,000 × ⅓ × 10% = $7,130,000). Therefore, we estimate that decreasing the basis for the rate of return by 23 percent will result in decreased yearly gas transportation allowance deductions of approximately $1.64 million ($7.13 million × 0.23). That is, the net increased cost to industry, based on this change, will be approximately $1,640,000 in additional royalties.

Cost—Allow a Rate of Return on Reasonable Salvage Value for Federal Oil, Gas, and Coal

For Federal oil and gas, after a transportation system or a processing plant has been depreciated to its reasonable salvage value, we will allow a lessee a return on that reasonable salvage value of the transportation system or processing plant as long as the lessee uses that system or plant for its Federal oil or gas production. We estimated that the economic impact on industry will be small because we will continue the requirements of the previous regulations that a lessee must base depreciation of a system or plant upon the useful life of the equipment or the expected life of the reserves that the system or plant served. Thus, when properly established, the depreciation schedule should reflect the useful life of the system or plant, and we will not expect a lessee to continue to use a system or plant for periods significantly longer than the period reflected by the depreciation schedule that the lessee established for royalty purposes. This assumption is true, especially if the lessee did not make additional capital expenditures that extended the life of the system or plant. In that case, the lessee should have extended the depreciation schedule to reflect the extended life of the system or plant, and, possibly, the salvage value, itself. In other words, the vast majority of systems will not depreciate to salvage value while royalty is being paid because the system still has a useful life while production occurs. Thus, there will not be any costs to industry associated with this change.

With respect to Federal coal, the royalty impact for coal will be equally small for the same reasons that we mentioned above.

Cost—Disallow Line Loss as a Component of Arm's-Length and Non-Arm's-Length Oil and Gas Transportation

We also will eliminate the current regulatory provision allowing a lessee to deduct costs of pipeline losses, both actual and theoretical, when calculating non-arm's-length transportation allowances. For this analysis, we assumed that pipeline losses are 0.2 percent of the volume transported through the pipeline, based on a survey of pipeline tariff. This 0.2 percent of the volume transported also equates to 0.2 percent of the value of the Federal royalty volume of oil and gas production transported.

For Federal oil produced in calendar year 2010, the total value of the Federal royalty volume subject to transportation allowances was $3,796,827,823 in the GOM and $1,204,177,633 everywhere else. Using our previous assumption that 50 percent of GOM and 10 percent of everywhere else's transportation allowances are non-arm's-length, we estimated that the value of the line loss will be $4.04 million, as we detailed in the table below. Therefore, the annual cost to industry will be approximately $4.04 million in additional royalties.

OIL LINE LOSS ROYALTY IMPACT

	Royalty value	Line loss (%)	Royalty increase
50% of GOM royalty value	$1,898,413,912	0.2	$3,800,000
10% of everywhere else royalty value	120,417,763	0.2	241,000
Total			4,040,000

For Federal gas produced in calendar year 2010, the royalty value of the Federal gas royalty volume subject to transportation allowances was $2,656,843,158. Using our previous assumption that 10 percent of Federal gas transportation allowances are non-arm's-length, we estimated that the value of the line loss will be $531,000. Therefore, the annual cost to industry will be approximately $531,000 in increased royalties.

GAS LINE LOSS ROYALTY IMPACT

	Royalty value	Line loss (%)	Royalty increase
10% of royalty value	$265,684,316	0.2	$531,000

The total estimated royalty increase for both oil and gas due to this change will be $4.57 million [$4,040,000 (oil) + $531,000 (gas) = $4,571,000].

Cost—Depreciating Oil Pipeline Assets Only Once

We will allow depreciation of oil pipeline assets only one time. Under the previous valuation regulations for Federal oil, if an oil pipeline was sold, we allowed the purchasing company to include the purchase price to establish a new depreciation schedule and, in essence, depreciate the same piece of pipe twice or more if it was sold again. Under this final rule, we allow depreciation only once. In theory, this change can result in additional royalties. However, based on our experience monitoring the oil markets, we find that the sale of oil pipeline assets is rare, and we are not aware of any such sales in the last five calendar years. We are also not aware of any planned future sales of oil pipelines that this rule change will impact. Therefore, although there will be a cost to industry under this rule, we cannot quantify the cost at this time.

Cost—Using First Arm's-Length Sale to Value Non-Arm's-Length Sales of Federal Coal and Sales of Federal Coal Between Coal Cooperatives and Coal Cooperative Members and Between Coal Cooperative Members

We discuss this cost in the next section.

Cost—Using Sales of Electricity to Value Non-Arm's-Length Sales of Federal Coal and Sales of Federal Coal Between Coal Cooperatives and Coal Cooperative Members and Between Coal Cooperative Members

In our experience, non-arm's-length sales of Federal coal that is then resold at arm's-length represent a small fraction of all coal sales. Under the previous valuation regulations, such sales result in royalty values equivalent to values that result under the regulation at § 1206.252(a) based on arm's-length resale prices. Thus, we estimated that there will be no royalty effect for these types of sales. In other words, there is no cost to lessees who produce Federal coal due to this valuation change in this rule.

The remaining non-arm's-length dispositions of Federal coal (including lessees, their affiliates, coal cooperatives, and members of coal cooperatives) are when the lessee, its affiliate, coal cooperatives, or members of coal cooperatives consume(s) the Federal coal produced to generate electricity. These dispositions typically constitute from about one to two percent of royalties paid on Federal coal produced.

Under this rule, a lessee, its affiliates, a coal cooperative, and a member of a coal cooperative generally will base the royalty value of such sales on the sales value of the electricity, less costs to generate and, in some cases, transmit the electricity to the buyers, and less applicable coal washing and transportation costs. We have limited experience determining lease product royalty values using the method under § 1206.252(b)(1). Therefore, to perform an economic analysis, we first determined the average royalties paid to us in calendar years 2009 through 2011 for these Federal coal dispositions. Based on our experience with other dispositions of Federal coal, we estimated that, at most, royalty values under this rule will increase or decrease by 10 percent, compared to royalty values that we determined under previous regulations. Using these assumptions, we estimated the annual average royalty impact and, thus, the cost or benefit to industry from this rule.

Our method is the same for estimating the royalty impact of using sales of electricity to value non-arm's-length sales of Federal coal, sales of Federal coal between coal cooperatives and coal cooperative members, and sales between coal cooperative members. Therefore, the estimated royalty impact will be a combined figure covering all such valuation of Federal coal under this rule. Accordingly, we estimated that the combined average annual royalty impacts for these coal dispositions will range from a royalty decrease of $1.06 million (benefit) to a royalty increase of $1.06 million (cost).

Cost—Using Default Provision to Value Non-Arm's-Length Sales of Federal Coal in Lieu of Sales of Electricity

If we were unable to establish royalty values of Federal coal using the sales value of electricity generated from coal produced, royalty value will be based on a method that the lessee proposes under § 1206.252(b)(2)(i), which we approve, or on a method that we determine under § 1206.254. In either case, we will accept or assign a royalty value that will approximate the market value of the coal. Whether valuing under §§ 1206.252(b)(2)(i) or 1206.254, we and the lessee will employ a valuation method that uses or approximates market value. Current coal valuation regulations also attempt to provide royalty values that will approximate the market value of this coal. Thus, given the low percentage of non-arm's-length dispositions of Federal coal and the use of market-based methods to determine royalty value under the current regulations and this rule, if valuation does not follow § 1206.252(a) or § 1206.252(b)(1), we estimate that the royalty effect of this rule on lessees of Federal coal will be nominal.

Cost—Using First Arm's-Length Sale to Value Non-Arm's-Length Sales of Indian Coal

Currently, Indian coal lessees sell their entire production at arm's-length, so this rule change will have no cost impact on them.

Cost—Using Sales of Electricity to Value Non-Arm's-Length Sales of Indian Coal

Currently, Indian coal lessees sell their entire production at arm's-length, so this rule change will have no cost impact on them.

Cost—Using First Arm's-Length Sale to Value Sales of Indian Coal Between Coal Cooperative Members

Currently, no coal cooperatives are Indian coal lessees, so we do not expect there to be any royalty impact as a result of this rule change.

Cost—Department Use of Default Provision to Value Federal Oil, Gas, or Coal and Indian Coal

As we discussed above, we added a default provision that addresses valuation when the Secretary cannot determine the value of production because of a variety of factors, or the Secretary determined that the value is wrong for a multitude of reasons (for example, misconduct). In those cases, the Secretary will exercise his/her authority and considerable discretion, to establish the reasonable value of production using a variety of discretionary factors and any other information that the Secretary deems appropriate. This default provision covers all products (Federal oil, gas, and coal and Indian coal) and all pertinent valuation factors (sales, transportation, processing, and washing).

Based on our experience, we anticipate that we will use the default provision only in specific cases where conventional valuation procedures have not worked to establish a value for royalty purposes. As such, we believe that assigning a royalty impact figure to any of the default provisions is speculative because (1) each instance will be case-specific, (2) we cannot anticipate when we will use the option, and (3) we cannot anticipate the value we will require companies to pay. Additionally, we estimated that the royalty impact will be relatively small because the default provisions will always establish a reasonable value of production using market-based transaction data, which has always been the basis for our royalty valuation rules in the first instance.

B. State and Local Governments

This rule will not impose any additional burden on local governments. We estimate that the States, which this rule impacts, will receive an overall increase in royalties as follows:

States receiving revenues for offshore OCSLA Section 8(g) leases will share in a portion of the increased royalties resulting from this rule, as will States receiving revenues from onshore Federal lands. Based on the ratio of Federal revenues disbursed to States for section 8(g) leases and onshore States that we detail in the table below, we assumed the same proportion of revenue increases for each proposal that will impact those State revenues for most of the provisions.

ROYALTY DISTRIBUTIONS BY LEASE TYPE

	Onshore (%)	Offshore (%)	8(g) (%)
Federal	50	100	73
State	50	0	0
State (8g)	0	0	27

Some provisions, such as deep water gathering allowances, affect only Federal revenues, while others, such as the extraordinary processing allowance, affect only onshore States and Federal revenues. The table summarizing the State and local government royalty increases that we provide in section E details these differences.

The State distribution for offshore royalties will increase at some point in time because of the provisions of the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (Pub. Law No. 109–432, 120 Stat. 2922). Section 105 of GOMESA provides OCS oil and gas revenue sharing provisions for the four Gulf producing States (Alabama, Louisiana, Mississippi, and Texas) and their eligible coastal political subdivisions. Through fiscal year 2016, the only shareable qualified revenues originate from leases issued within two small geographic areas. Beginning in fiscal year 2017, qualified revenues originating from leases issued since the passing of GOMESA located within the balance of the GOM acreage will also become shareable. The majority of these leases are not yet producing. The time necessary to start production operations and to produce royalty-bearing quantities varies from lease to lease, and these factors directly influence how the distribution of offshore royalties will change over time. None of the leases in these frontier areas have begun producing, and it is speculative to anticipate when they will begin producing royalty-bearing quantities and impact the distribution of revenues to States.

C. Indian Lessors

We estimate that the rule changes to the coal regulations that apply to Indian lessors will have no impact on their royalties.

D. Federal Government

The impact to the Federal government, like the States, will be a net overall increase in royalties as a result of these rule changes. In fact, the royalty increase that the Federal government anticipates will be the difference between the total royalty increase from industry and the royalty increase affecting the States. The net yearly impact on the Federal government will be approximately 61.8 million that we detail in section E.

E. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Lessors, and the Federal Government

In the table below, the negative values in the Industry column represent increases in their estimated royalty burden, while the positive values in the other columns represent the increase in each affected group's royalty receipts. For the purposes of this summary table, we assumed that the average for royalty increases is the midpoint of our range.

Rule provision	Industry	Federal	State	State 8(g)
Gas—replace benchmarks				
Affiliate resale	($2,010,000)	$1,390,000	$605,000	$13,500
Index	(11,300,000)	7,820,000	3,400,000	75,700
NGLs—replace benchmarks				
Affiliate resale	(256,000)	191,000	63,000	1,850
Index	(1,200,000)	896,000	295,000	8,650
Gas transportation limited to 50%	(4,170,000)	2,890,000	1,260,000	27,900
Processing allowance limited to 66⅔%	(5,440,000)	4,060,000	1,340,000	39,200
POP contracts limited to 66⅔%	0	0	0	0
Extraordinary processing allowance	(18,500,000)	9,250,000	9,250,000	0
BBB bond rate change for gas transportation	(1,640,000)	1,140,000	494,000	11,000
Eliminate deep water gathering	(20,500,000)	20,500,000	0	0
Oil transportation limited to 50%	(6,430,000)	5,810,000	594,000	27,100
Oil and gas line losses	(4,571,000)	4,130,000	422,000	19,200
BBB bond rate change for oil transportation	(2,380,000)	2,150,000	220,000	10,000
Coal—non-arm's-length netback & co-op sales	0	0	0	0
Total	(78,390,000)	60,260,000	17,942,000	234,000

2. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rulemaking. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. This executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

3. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see item 1 above for the analysis.

This rule will affect lessees under Federal oil and gas leases and Federal and Indian coal leases. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System (NAICS), as follows:

- Code 211111, which includes companies that extract crude petroleum and natural gas
- Code 212111, which includes companies that extract surface coal
- Code 212112, which includes companies that extract underground coal

For these NAICS code classifications, a small company is one with fewer than 500 employees. Approximately 1,920 different companies submit royalty and production reports from Federal oil and gas leases and Federal and Indian coal leases to us each month. Of these, approximately 65 companies are large businesses under the U.S. Small Business Administration definition because they have more than 500 employees. The Department estimates that the remaining 1,855 companies that this rule affects are small businesses.

As we stated earlier, based on 2010 sales data, this rule will cost industry approximately $78 million dollars per year. Small businesses accounted for about 20 percent of the royalties paid in 2010. Applying that percentage to industry costs, we estimate that the changes in this final rule will cost all small-business lessors approximately $15,600,000 per year. The amount will vary for each company depending on the volume of production that each small business produces and sells each year.

In sum, we do not estimate that this rule will result in a significant economic effect on a substantial number of small entities because this rule will cost affected small businesses a collective total of $15,600,000 per year. Therefore, a Regulatory Flexibility Analysis will not be required, and, accordingly, a Small Entity Compliance Guide will not be required.

Your comments are important. The Small Business and Agriculture

Regulatory Enforcement Ombudsman and ten Regional Fairness Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on ONRR's actions, call 1–(888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

4. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. We estimate that the maximum effect on all of industry will be $84,850,000. The Summary of Royalty Impacts table, as shown in item 1 above, demonstrates that the economic impact on industry, State and local governments and the Federal government will be well below the $100 million threshold that the Federal government uses to define a rule as having a significant impact on the economy.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. See item 1 above.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U. S.-based enterprises to compete with foreign-based enterprises. We are the only agency that promulgates rules for royalty valuation on Federal oil and gas leases and Federal and Indian coal leases.

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. We are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires because this rule is not an unfunded mandate. See item 1 above.

6. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. This rule will apply to Federal oil, Federal gas, Federal coal, and Indian coal leases only. Therefore, this rule does not require a Takings Implication Assessment.

7. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The management of Federal oil leases, Federal gas leases, and Federal and Indian coal leases is the responsibility of the Secretary of the Interior, and we distribute all of the royalties that we collect from the leases to States, Tribes, and individual Indian mineral owners. This rule does not impose administrative costs on States or local governments. This rule also does not substantially and directly affect the relationship between the Federal and State governments. Because this rule does not alter that relationship, this rule does not require a Federalism summary impact statement.

8. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

9. Consultation With Indian Tribal Governments (E.O. 13175)

Under the criteria in E.O. 13175, we evaluated this final rule and determined that it will have potential effects on Federally-recognized Indian Tribes. Specifically, this rule will change the valuation method for coal produced from Indian leases as discussed above. Accordingly:

(a) We held a public workshop on October 20, 2011, in Albuquerque, New Mexico, to consider Tribal comments on the Indian coal valuation regulations.

(b) We solicited and received comments from a Tribe through our Advance Notice of Proposed Rulemaking published on May 27, 2011 (76 FR 30881).

(c) We requested further comments from our Tribal partners through our bi-annual State and Tribal Royalty Audit Committee meetings held in May and November 2015.

(d) We considered Tribal views in this final rule.

10. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule also refers to, but does not change, the information collection requirements that OMB already approved under OMB Control Numbers 1012–0004, 1012–0005, and 1012–0010. Since this rule is reorganizing our current regulations, please refer to the Derivations Table in Section II for specifics. The corresponding information collection burden tables will be updated during their normal renewal cycle. *See* 5 CFR 1320.4(a)(2).

11. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for a categorical exclusion under 43 CFR 46.210(c) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: "*(c) Routine financial transactions including such things as . . . audits, fees, bonds, and royalties . . . (i) Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature.*" We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that require further analysis under NEPA. The procedural changes resulting from these amendments will have no consequence on the physical environment. This rule does not alter, in any material way, natural resources exploration, production, or transportation.

12. Effects on the Nation's Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

List of Subjects in 30 CFR Parts 1202 and 1206

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Oil, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 24, 2016.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR parts 1202 and 1206 as set forth below:

PART 1202—ROYALTIES

■ 1. The authority citation for part 1202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*,1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*,1331 *et seq.*, and 1801 *et seq.*

Subpart B—Oil, Gas, and OCS Sulfur, General

■ 2. In § 1202.51, revise paragraph (b) to read as follows:

§ 1202.51 Scope and definitions.

* * * * *

(b) The definitions in § 1206.20 are applicable to subparts B, C, D, and J of this part.

Subpart F—Coal

■ 3. Add § 1202.251 to subpart F to read as follows:

§ 1202.251 What coal is subject to royalties?

(a) All coal (except coal unavoidably lost as BLM determines under 43 CFR part 3400) from a Federal or Indian lease is subject to royalty. This includes coal used, sold, or otherwise disposed of by you on or off of the lease.

(b) If you receive compensation for unavoidably lost coal through insurance coverage or other arrangements, you must pay royalties at the rate specified in the lease on the amount of compensation that you receive for the coal. No royalty is due on insurance compensation that you received for other losses.

(c) If you rework waste piles or slurry ponds to recover coal, you must pay royalty at the rate specified in the lease at the time when you use, sell, or otherwise finally dispose of the recovered coal.

(1) The applicable royalty rate depends on the production method that you used to initially mine the coal contained in the waste pile or slurry pond (such as an underground mining method or a surface mining method).

(2) You must allocate coal in waste pits or slurry ponds that you initially mined from Federal or Indian leases to those Federal or Indian leases regardless of whether it is stored on Federal or Indian lands.

(3) You must maintain accurate records demonstrating how to allocate the coal in the waste pit or slurry pond to each individual Federal or Indian coal lease.

PART 1206—PRODUCT VALUATION

■ 4. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*,1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 5. Revise subpart A to read as follows:

Subpart A—General Provisions and Definitions

Sec.

1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?
1206.20 What definitions apply to this part?

Subpart A—General Provisions and Definitions

§ 1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?

OMB has approved the information collection requirement contained in this part under 44 U.S.C. 3501 *et seq.* See 30 CFR part 1210 for details concerning the estimated reporting burden and how to comment on the accuracy of the burden estimate.

§ 1206.20 What definitions apply to this part?

Ad valorem lease means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

Affiliate means a person who controls, is controlled by, or is under common control with another person. For the purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider each of the following factors to determine if there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors

(ii) With respect to the voting securities, or instruments of ownership or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, if a person is the greatest single owner, or if there is an opposing voting bloc of greater ownership

(iii) Operation of a lease, plant, pipeline, or other facility

(iv) The extent of others owners' participation in operations and day-to-day management of a lease, plant, or other facility

(v) Other evidence of power to exercise control over or common control with another person

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope.

Area means a geographic region at least as large as the limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

Arm's-length-contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means an examination, conducted under the generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases or Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

BOEM means the Bureau of Ocean Energy Management of the Department of the Interior.

BSEE means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

Coal means coal of all ranks from lignite through anthracite.

Coal cooperative means an entity organized to provide coal or coal-related services to the entity's members (who may or may not also be owners of the entity), partners, and others. The entity may operate as a coal lessee, operator, payor, logistics provider, or electricity generator, or any of their affiliates, and may be organized to be non-profit or for-profit.

Coal washing means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations, such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

Compression means the process of raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Constraint means a reduction in, or elimination of, gas flow, deliveries, or sales required by the delivery system.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that, with due consideration, creates an obligation.

Designee means the person whom the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (such as West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

FERC means Federal Energy Regulatory Commission.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. BOEM names and designates boundaries of OCS fields.

Gas means any fluid, either combustible or non-combustible, hydrocarbon or non-hydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off of the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively, including any movement of bulk production from the wellhead to a platform offshore.

Geographic region means, for Federal gas, an area at least as large as the defined limits of an oil and or gas field in which oil and/or gas lease products have similar quality and economic characteristics.

Gross proceeds means the total monies and other consideration accruing for the disposition of any of the following:

(1) *Oil.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government

(ii) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf

(iii) Reimbursements for harboring or terminalling fees, royalties, and any other reimbursements

(iv) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(v) Payments made to reduce or buy down the purchase price of oil produced in later periods by allocating such payments over the production whose price that the payment reduces and including the allocated amounts as proceeds for the production as it occurs

(vi) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts

(2) *Gas, residue gas, and gas plant products.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the Federal Government

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

(3) *Coal.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal that the lessee must perform at no cost to the Federal Government or Indian lessor

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements even though the Federal or Indian royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

Index means:

(1) For gas, the calculated composite price ($/MMBtu) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes

(2) For oil, the calculated composite price ($/barrel) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes.

Index pricing point means any point on a pipeline for which there is an index, which ONRR-approved publications may refer to as a trading location.

Index zone means a field or an area with an active spot market and published indices applicable to that field or an area that is acceptable to ONRR under § 1206.141(d)(1).

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Keepwhole contract means a processing agreement under which the processor delivers to the lessee a quantity of gas after processing equivalent to the quantity of gas that the processor received from the lessee prior to processing, normally based on heat content, less gas used as plant fuel and gas unaccounted for and/or lost. This includes, but is not limited to, agreements under which the processor retains all NGLs that it recovered from the lessee's gas.

Lease means any contract, profit-sharing arrangement, joint venture, or other agreement issued or approved by the United States under any mineral leasing law, including the Indian Mineral Development Act, 25 U.S.C. 2101–2108, that authorizes exploration for, extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

Lease products mean any leased minerals, attributable to, originating from, or allocated to a lease or produced in association with a lease.

Lessee means any person to whom the United States, an Indian Tribe, and/or individual Indian mineral owner issues a lease, and any person who has been assigned all or a part of record title, operating rights, or an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease.

(2) In the case of leases for Indian coal or Federal coal, an operator, payor, or other person with no lease interest who makes royalty payments on the lessee's behalf.

Like quality means similar chemical and physical characteristics.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point that ONRR recognizes for oil sales, refining, or transshipment. Market centers generally are locations where ONRR-approved publications publish oil spot prices.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area for Federal oil and gas, and region for Federal and Indian coal.

Mine means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

Misconduct means any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior, regardless of the mental state of the lessee or any individual employed by or associated with the lessee.

Net output means the quantity of:

(1) For gas, residue gas and each gas plant product that a processing plant produces.

(2) For coal, the quantity of washed coal that a coal wash plant produces.

Netting means reducing the reported sales value to account for an allowance instead of reporting the allowance as a separate entry on the Report of Sales and Royalty Remittance (Form ONRR–2014) or the Solid Minerals Production and Royalty Report (Form ONRR–4430).

NGLs means Natural Gas Liquids.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) First, sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the prompt month corresponding to each such day.

(2) Second, divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

ONRR means the Office of Natural Resources Revenue of the Department of the Interior.

ONRR-approved commercial price bulletin means a publication that ONRR approves for determining NGLs prices.

ONRR-approved publication means:

(1) For oil, a publication that ONRR approves for determining ANS spot prices or WTI differentials.

(2) For gas, a publication that ONRR approves for determining index pricing points.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Payor means any person who reports and pays royalties under a lease, regardless of whether that person also is a lessee.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Processing means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing. The use of a Joule-Thomson (JT) unit to remove NGLs from gas is considered processing regardless of where the JT unit is located, provided that you market the NGLs as NGLs.

Processing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for processing gas.

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Region for coal means the eight Federal coal production regions, which the Bureau of Land Management designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region. See 44 FR 65197 (1979).

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the "Four Corners" area that lie within Colorado and Utah.

Roll means an adjustment to the NYMEX price that is calculated as follows: $\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$, where: P_0= the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; P_1 = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) *Example 1. Prices in Out Months are Lower Going Forward:* The month of production for which you must determine royalty value is December. December was the prompt month (for year 2011) from October 21 through November 18. January was the first month following the month of production, and February was the second month following the month of production. P_0, therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 21 and November 18. P_1 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 21 and November 18. P_2 is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 21 and November 18. In this example, assume that $P_0 = \$95.08$ per bbl, $P_1 = \$95.03$ per bbl, and $P_2 = \$94.93$ per bbl. In this example (a declining market), $\text{Roll} = .6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$. You add this number to the NYMEX price.

(2) *Example 2. Prices in Out Months are Higher Going Forward:* The month of production for which you must determine royalty value is November. November was the prompt month (for year 2012) from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production. P_0, therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22. P_1 is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between September 21 and October 22. P_2 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that $P_0 = \$91.28$ per bbl, $P_1 = \$91.65$ per bbl, and $P_2 = \$92.10$ per bbl. In this example (a rising market), $\text{Roll} = .6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) = (-\$0.25) + (-\$0.27) = (-\$0.52)$. You add this negative number to the NYMEX price (effectively, a subtraction from the NYMEX price).

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil, gas, gas plant product, or coal to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil, gas, gas plant product, or coal from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil, gas, gas plant product, or coal; and

(3) The parties' intent is for a sale of the oil, gas, gas plant product, or coal to occur.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Short ton means 2,000 pounds.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration.

(2) No cancellation notice is required to terminate the sales agreement.

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tonnage means tons of coal measured in short tons.

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, *www.cmegroup.com,* in which case, the NYMEX definition will apply.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs that the lessee incurs for moving:

(1) Oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

(2) Unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off of the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

(3) Coal to a point of sale remote from both the lease and mine or wash plant.

Washing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for coal washing.

WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

■ 6. Revise subpart C to read as follows:

Subpart C—Federal Oil

Sec.
1206.100 What is the purpose of this subpart?
1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?
1206.102 How do I value oil not sold under an arm's-length contract?
1206.103 What publications does ONRR approve?
1206.104 How will ONRR determine if my royalty payments are correct?
1206.105 How will ONRR determine the value of my oil for royalty purposes?

1206.106 What records must I keep to support my calculations of value under this subpart?
1206.107 What are my responsibilities to place production into marketable condition and to market production?
1206.108 How do I request a valuation determination?
1206.109 Does ONRR protect information I provide?
1206.110 What general transportation allowance requirements apply to me?
1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?
1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?
1206.114 How will ONRR identify market centers?
1206.115 What are my reporting requirements under an arm's-length transportation contract?
1206.116 What are my reporting requirements under a non-arm's-length transportation contract?
1206.117 What interest and penalties apply if I improperly report a transportation allowance?
1206.118 What reporting adjustments must I make for transportation allowances?
1206.119 How do I determine royalty quantity and quality?

Subpart C—Federal Oil

§ 1206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the OCS. It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms "you" and "your" in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee's oil by applying the rules in this subpart to your disposition of the lessee's oil.

(c) If you are a designee and only report for a lessee and do not dispose of the lessee's production, references to "you" and "your" in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) ONRR may audit, monitor, or review and adjust all royalty payments.

§ 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract less applicable allowances determined under § 1206.111 or § 1206.112. This value does not apply if you exercise an option to use a different value provided in paragraph (c)(1) or (c)(2)(i) of this section or if ONRR decides to value your oil under § 1206.105. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (c)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) that you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either paragraph (a) of this section or § 1206.102 to value your production for royalty purposes. If you fail to make the election required under this paragraph, you may not make a retroactive election, and ONRR may decide your value under § 1206.105.

(i) If you use paragraph (a) of this section, your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may decide your value under § 1206.105. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 1206.101(c)(1) to use paragraph (a) of this section or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every two years.

(2)(i) If you sell or transfer your oil production to your affiliate, and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either paragraph (a) of this section or § 1206.102 to value your production for royalty purposes.

(ii) When you elect under paragraph (c)(2)(i) of this section to use paragraph (a) of this section or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's-length. You may not change your election more often than once every two years.

§ 1206.102 How do I value oil not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section, unless ONRR decides to value your oil under 1206.105. First, determine if paragraph (a), (b), or (c) of this section applies to production from your lease, or if you may apply paragraph (d) or (e) with ONRR's approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month. For example, if the production month is June, calculate the average of the daily mean prices using the daily ANS spot prices published in the ONRR-approved publication for all of the business days in June.

(1) To calculate the daily mean spot price, you must average the daily high and low prices for the month in the selected publication.

(2) You must use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 1206.111.

(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(2) or (3) of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease or a portion of the lease is not part of a unit or communitization agreement) that you cannot value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section.

(1)You may elect to value your oil under either paragraph (b)(2) or (3) of this section. After you select either paragraph (b)(2) or (3) of this section, you may not change to the other method more often than once every two years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new two-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliate's arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliate's production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price (without the roll), adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(2) through (3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, ONRR's Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(2) If ONRR's Director determines that the use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula that industry uses to calculate the roll changes, ONRR may terminate or modify the use of the roll under paragraph (c)(1) of this section at the end of each two-year period as of January 1, 2017, through a notice published in the **Federal Register** not later than 60 days before the end of the two-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

§ 1206.103 What publications does ONRR approve?

(a) ONRR will periodically publish on *www.onrr.gov* a list of ONRR-approved publications for the NYMEX price and ANS spot price based on certain criteria including, but not limited to:

(1) Publications buyers and sellers frequently use.

(2) Publications frequently mentioned in purchase or sales contracts.

(3) Publications that use adequate survey techniques, including development of estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil.

(4) Publications independent from ONRR, other lessors, and lessees.

(b) Any publication may petition ONRR to be added to the list of acceptable publications.

(c) ONRR will specify the tables that you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if we determine that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

§ 1206.104 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value or decide your value under § 1206.105.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter), or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or to your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.105.

(c) ONRR may decide your value under § 1206.105 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the oil for the mutual benefit of yourself and the lessor by selling your oil at a value that is unreasonably low. ONRR may consider a sales price to be unreasonably low if it is 10 percent less than the lowest reasonable measures of market price including—but not limited to—index prices and prices reported to ONRR for like quality oil; or

(3) ONRR cannot determine if you properly valued your oil under § 1206.101 or § 1206.102 for any reason including—but not limited to—your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the oil.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or in a timely manner, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may determine your value under § 1206.105.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.105 How will ONRR determine the value of my oil for royalty purposes?

If ONRR decides that we will value your oil for royalty purposes under § 1206.104, or any other provision in this subpart, then we will determine value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to, the following:

(a) The value of like-quality oil in the same field or nearby fields or areas

(b) The value of like-quality oil from the refinery or area

(c) Public sources of price or market information that ONRR deems reliable

(d) Information available and reported to ONRR, including but not limited to on Form ONRR–2014 and the Oil and Gas Operations Report (Form ONRR–4054)

(e) Costs of transportation or processing if ONRR determines that they are applicable

(f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the oil

§ 1206.106 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must show both of the following:

(1) How you calculated the value that you reported, including all adjustments for location, quality, and transportation.

(2) How you complied with these rules.

(b) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c) ONRR may review and audit your data, and ONRR will direct you to use a different value if we determine that the reported value is inconsistent with the requirements of this subpart.

§ 1206.107 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 1206.108 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any oil produced. Your request must:

(1) Be in writing;

(2) Identify, specifically, all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts; you must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents);

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a valuation determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to, the following:

(i) Requests for guidance on hypothetical situations

(ii) Matters that are the subject of pending litigation or administrative appeals

(c)(1) A valuation determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a valuation determination, you must make any adjustments to royalty payments that follow from the determination and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) A valuation determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR or the Assistant Secretary based any determination or guidance takes precedence over the determination or guidance, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a valuation determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.109.

§ 1206.109 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.110 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under § 1206.110, § 1206.111, or § 1206.112, as applicable. You may not deduct transportation costs that you incur to move a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1)(i) The movement to the sales point is not gathering.

(ii) For oil produced on the OCS, the movement of oil from the wellhead to the first platform is not transportation; and

(2) You value oil under § 1206.101 based on a sale at a point off of the lease, unit, or communitized area where the oil is produced; or

(3) You do not value your oil under § 1206.102(a)(3) or (b)(3).

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one liquid product, you must allocate costs consistently and equitably to each of the liquid products that are transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the liquid products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months when you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on Form ONRR–2014.

(d)(1) Your transportation allowance may not exceed 50 percent of the value of the oil, as determined under § 1206.101.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former § 1206.109(c), that approval is terminated as January 1, 2017.

(e) You must express transportation allowances for oil as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate are paid to a dollar-value equivalent.

(f) ONRR may determine your transportation allowance under § 1206.105 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the oil for the mutual benefit of yourself and the lessor by transporting your oil at a cost that is unreasonably high. We may consider a transportation allowance to be unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant product transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.111 or § 1206.112 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(g) You do not need ONRR's approval before reporting a transportation allowance.

§ 1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in § 1206.110(f) and subject to the limitation in § 1206.110(d).

(2) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(3) You do not need ONRR's approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section including, but not limited to:

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid for administration of a quality bank.

(4) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(5) Fees paid for short-term storage (30 days or less) incidental to transportation as a transporter requires.

(6) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(7) Transfer fees paid to a hub operator associated with physical

movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(8) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation.

(9) Costs of securing a letter of credit, or other surety, that the pipeline requires you, as a shipper, to maintain.

(10) Hurricane surcharges that you or your affiliate actually pay(s).

(11) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain and that you do maintain in the line as line fill. You must calculate this cost as follows:

(i) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under § 1206.101 or § 1206.102, as applicable.

(ii) Second, multiply the value calculated under paragraph (b)(11)(i) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 1206.112(i)(3) by 12.

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) Fees paid for long-term storage (more than 30 days)

(2) Administrative, handling, and accounting fees associated with terminalling

(3) Title and terminal transfer fees

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees

(5) Fees paid to brokers

(6) Fees paid to a scheduling service provider

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production

(8) Gauging fees

(d) If you have no written contract for the arm's-length transportation of oil, then ONRR will determine your transportation allowance under § 1206.105. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.108(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include the following:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3)(i) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(ii) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section after you have depreciated the transportation system to its reasonable salvage value.

(c) To the extent not included in costs identified in paragraphs (e) through (h) of this section.

(1) If you or your affiliate incur(s) the following actual costs under your or your affiliate's non-arm's-length contract, you may include these costs in your calculations under this section:

(i) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance

(ii) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub; these fees do not include title transfer fees

(iii) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation

(iv) Fees paid to a non-affiliated quality bank administrator for administration of a quality bank

(v) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain—and that you do maintain—in the line as line fill; you must calculate this cost as follows:

(A) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under § 1206.101 or § 1206.102, as applicable.

(B) Second, multiply the value calculated under paragraph (c)(1)(v)(A) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 1206.112(i)(3) by 12.

(2) You may not include in your transportation allowance:

(i) Any of the costs identified under § 1206.111(c); and/or

(ii) Fees paid (either in volume or in value) for actual or theoretical line losses.

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including the costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include the following

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method (based on the life of equipment or on the life of the reserves that the transportation system services), or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a transportation system, with or without a change in ownership, only once.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?

This section applies when you use NYMEX prices or ANS spot prices to calculate the value of production under § 1206.102. As specified in this section, you must adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma, or adjust the ANS spot price to reflect the difference in value between your lease and the appropriate ONRR-recognized market center at which the ANS spot price is published (for example, Long Beach, California, or San Francisco, California). Paragraph (a) of this section explains how you adjust the value between the lease and the market center, and paragraph (b) of this section explains how you adjust the value between the market center and Cushing when you use NYMEX prices. Paragraph (c) of this section explains how adjustments may be made for quality differentials that are not accounted for through exchange agreements. Paragraph (d) of this section gives some examples. References in this section to "you" include your affiliates, as applicable.

(a) To adjust the value between the lease and the market center:

(1)(i) For oil that you exchange at arm's-length between your lease and the market center (or between any intermediate points between those locations), you must calculate a lease-to-market center differential by the applicable location and quality differentials derived from your arm's-length exchange agreement applicable to production during the production month.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's-length, you must obtain approval from ONRR for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement applicable to production during the production month. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties, plus interest, under 30 U.S.C. 1721(h).

(2) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points, as determined under § 1206.111 or § 1206.112, as applicable.

(3) If you transport or exchange at arm's-length (or both transport and exchange) at least 20 percent—but not all—of your oil produced from the lease to a market center, you must determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(i) Determine the volume-weighted average of the lease-to-market center adjustment calculated under paragraphs (a)(1) and (2) of this section for the oil that you do transport or exchange (or both transport and exchange) from your lease to a market center.

(ii) Use that volume-weighted average lease-to-market center adjustment as the adjustment for the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(4) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Until you obtain such approval, you may use your proposed adjustment. If ONRR prescribes a different adjustment, you must apply ONRR's adjustment to all periods for which you used your proposed adjustment. You must pay any additional royalties due resulting from using ONRR's adjustment, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(5) You may not both take a transportation allowance and use a location and quality adjustment or exchange differential for the same oil between the same points.

(b) For oil that you value using NYMEX prices, you must adjust the value between the market center and Cushing, Oklahoma, as follows:

(1) If you have arm's-length exchange agreements between the market center and Cushing under which you exchange to Cushing at least 20 percent of all of the oil that you own at the market center during the production month, you must use the volume-weighted average of the location and quality differentials from those agreements as the adjustment between the market center and Cushing for all of the oil that you produce from the leases during that production month for which that market center is used.

(2) If paragraph (b)(1) of this section does not apply, you must use the WTI differential published in an ONRR-approved publication for the market center nearest to your lease, for crude oil most similar in quality to your

production, as the adjustment between the market center and Cushing. For example, for light sweet crude oil produced offshore of Louisiana, you must use the WTI differential for Light Louisiana Sweet crude oil at St. James, Louisiana. After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(3) If neither paragraph (b)(1) nor (2) of this section applies, you may propose an alternative differential to ONRR. Until you obtain such approval, you may use your proposed differential. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(c)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a) and (b) of this section, you also must adjust the NYMEX price or ANS spot price for quality based on premiums or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point that BSEE or BLM, as applicable, approve. You must make this adjustment only if, and to the extent that, such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil, as adjusted, is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), and (c)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content.

(i) You may request prior ONRR approval to use a different adjustment.

(ii) If ONRR approves your request to use a different quality adjustment, you may begin using that adjustment for the production month following the month when ONRR received your request.

(d) The examples in this paragraph illustrate how to apply the requirement of this section.

(1) *Example.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further, assume that the lessee transports the oil to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume that the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is $86.21/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is −$2.27/bbl; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of −$0.08/bbl; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is $0.40/bbl. In this example, the royalty value of the oil is $86.21 − $2.27 − $0.08 − $0.40 = $83.46/bbl.

(2) *Example.* Assume the same facts as in the example in paragraph (d)(1) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia and transports the remaining 60 percent directly to its own refinery in Ohio. In this example, the 40 percent of the production would be valued at $83.46/bbl, as explained in the previous example. In this example, the other 60 percent also would be valued at $83.46/bbl.

(3) *Example.* Assume that a Federal lessee produces crude oil from a lease near Bakersfield, California. Further, assume that the lessee transports the oil to Hynes Station and then exchanges the oil to Cushing, which it further exchanges with oil that it refines. Assume that the ANS spot price is $105.65/bbl and that the lessee's actual cost of transporting the oil from Bakersfield to Hynes Station is $0.28/bbl. The lessee must request approval from ONRR for a location and quality adjustment between Hynes Station and Long Beach. For example, the lessee likely would propose using the tariff on Line 63 from Hynes Station to Long Beach as the adjustment between those points. Assume that adjustment to be $0.72, including the sulfur and gravity bank adjustments, and that ONRR approves the lessee's request. In this example, the preliminary (because the location and quality adjustment is subject to ONRR's review) royalty value of the oil is $105.65 − $0.72 − $0.28 = $104.65/bbl. The fact that oil was exchanged to Cushing does not change the use of ANS spot prices for royalty valuation.

§ 1206.114 How will ONRR identify market centers?

ONRR will monitor market activity and, if necessary, add to or modify the list of market centers that we publish to *www.onrr.gov.* ONRR will consider the following factors and conditions in specifying market centers:

(a) Points where ONRR-approved publications publish prices useful for index purposes.

(b) Markets served.

(c) Input from industry and others knowledgeable in crude oil marketing and transportation.

(d) Simplification.

(e) Other relevant matters.

§ 1206.115 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.116 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.118 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You may find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.112(j) to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of § 1206.115.

§ 1206.117 What interest and penalties apply if I improperly report a transportation allowance?

(a) If you deduct a transportation allowance on Form ONRR–2014 that exceeds 50 percent of the value of the oil transported, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date when you pay the additional royalties due.

(b) If you improperly net a transportation allowance against the oil instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.118 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

§ 1206.119 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(b) If you base the value of oil determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you sustain before the royalty settlement metering or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(d) You must pay royalties on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that you claim to have taken place either before or after the approved point of royalty settlement.

■ 7. Revise subpart D to read as follows:

Subpart D—Federal Gas

Sec.

1206.140 What is the purpose and scope of this subpart?
1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.143 How will ONRR determine if my royalty payments are correct?
1206.144 How will ONRR determine the value of my gas for royalty purposes?
1206.145 What records must I keep in order to support my calculations of royalty under this subpart?
1206.146 What are my responsibilities to place production into marketable condition and to market production?
1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
1206.148 How do I request a valuation determination?
1206.149 Does ONRR protect information that I provide?
1206.150 How do I determine royalty quantity and quality?
1206.151 [Reserved]
1206.152 What general transportation allowance requirements apply to me?
1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?
1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?
1206.155 What are my reporting requirements under an arm's-length transportation contract?
1206.156 What are my reporting requirements under a non-arm's-length transportation contract?
1206.157 What interest and penalties apply if I improperly report a transportation allowance?
1206.158 What reporting adjustments must I make for transportation allowances?
1206.159 What general processing allowances requirements apply to me?
1206.160 How do I determine a processing allowance if I have an arm's-length processing contract?
1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?
1206.162 What are my reporting requirements under an arm's-length processing contract?
1206.163 What are my reporting requirements under a non-arm's-length processing contract?
1206.164 What interest and penalties apply if I improperly report a processing allowance?
1206.165 What reporting adjustments must I make for processing allowances?

Subpart D—Federal Gas

§ 1206.140 What is the purpose and scope of this subpart?

(a) This subpart applies to all gas produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) The terms "you" and "your" in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) This section applies to unprocessed gas. Unprocessed gas is:

(1) Gas that is not processed;

(2) Any gas that you are not required to value under § 1206.142 or that ONRR does not value under § 1206.144; or

(3) Any gas that you sell prior to processing based on a price per MMBtu or Mcf when the price is not based on the residue gas and gas plant products.

(b) The value of gas under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less a transportation allowance determined under § 1206.152. This value does not apply if you exercise the option in paragraph (c) of this section or if ONRR decides to value your gas under § 1206.144. You must use this paragraph (b) to value gas when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer unprocessed gas to your affiliate or another person under a non-arm's-length contract and

that affiliate or person, or an affiliate of either of them, then sells the gas under an arm's-length contract, unless you exercise the option provided in paragraph (c) of this section;

(3) You, your affiliate, or another person sell(s) unprocessed gas produced from a lease under multiple arm's-length contracts, and that gas is valued under this paragraph. Unless you exercise the option provided in paragraph (c) of this section, the value of the gas is the volume-weighted average of the values, established under this paragraph, for each contract for the sale of gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(c) If you do not sell under an arm's-length contract, you may elect to value your gas under this paragraph (c). You may not change your election more often than once every two years.

(1)(i) If you can only transport gas to one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport gas to more than one index pricing point published in an ONRR-approved publication available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints for that production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (c)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points available at *www.onrr.gov.*

(2) You may not take any other deductions from the value calculated under this paragraph (c).

(d) If some of your gas is used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas that you do sell.

(e) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point for the gas, then you must value your gas under paragraph (c) of this section; or

(2) There is not an index pricing point for the gas, then ONRR will decide the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under § 1206.143(a)(2).

§ 1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) This section applies to the valuation of processed gas, including but not limited to:

(1) Gas that you or your affiliate do not sell, or otherwise dispose of, under an arm's-length contract prior to processing.

(2) Gas where your or your affiliate's arm's-length contract for the sale of gas prior to processing provides for payment to be determined on the basis of the value of any products resulting from processing, including residue gas or natural gas liquids.

(3) Gas that you or your affiliate process under an arm's-length keepwhole contract.

(4) Gas where your or your affiliate's arm's-length contract includes a reservation of the right to process the gas, and you or your affiliate exercise(s) that right.

(b) The value of gas subject to this section, for royalty purposes, is the combined value of the residue gas and all gas plant products that you determine under this section plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing that you determine under subpart C of this part less applicable transportation and processing allowances that you determine under this subpart, unless you exercise the option provided in paragraph (d) of this section.

(c) The value of residue gas or any gas plant product under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. This value does not apply if you exercise the option provided in paragraph (d) of this section, or if ONRR decides to value your residue gas or any gas plant product under § 1206.144. You must use this paragraph (c) to value residue gas or any gas plant product when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the residue gas or any gas plant product under an arm's-length contract, unless you exercise the option provided in paragraph (d) of this section;

(3) You, your affiliate, or another person sell(s), under multiple arm's-length contracts, residue gas or any gas plant products recovered from gas produced from a lease that you value under this paragraph. In that case, unless you exercise the option provided in paragraph (d) of this section, because you sold non-arm's-length to your affiliate or another person, the value of the residue gas or any gas plant product is the volume-weighted average of the gross proceeds established under this paragraph for each arm's-length contract for the sale of residue gas or any gas plant products recovered from gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay to you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(d) If you do not sell under an arm's-length contract, you may elect to value your residue gas and NGLs under this paragraph (d). You may not change your election more often than once every two years.

(1)(i) If you can only transport residue gas to one index pricing point published in an ONRR-approved publication available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport residue gas to more than one index pricing point published in an ONRR-approved publication available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints, for the production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your residue gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (d)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points on *www.onrr.gov.*

(2)(i) If you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov,* you must choose one bulletin, and your value, for royalty purposes, is the monthly average price for that bulletin for the production month.

(ii) You must reduce the number calculated under paragraph (d)(2)(i) of this section by the amounts that ONRR posts at *www.onrr.gov* for the geographic location of your lease. The methodology that ONRR will use to calculate the amounts is set forth in the preamble to this regulation. This methodology is binding on you and ONRR. ONRR will update the amounts periodically using this methodology.

(iii) After you select an ONRR-approved commercial price bulletin available at *www.onrr.gov,* you may not select a different commercial price bulletin more often than once every two years.

(3) You may not take any other deductions from the value calculated under this paragraph (d).

(4) ONRR will post changes to any of the rates in this paragraph (d) on its Web site.

(e) If some of your gas or gas plant products are used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas or gas plant products that you do sell.

(f) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point or commercial price bulletin for the gas, then you must value your gas under paragraph (d) of this section.

(2) There is not an index pricing point or commercial price bulletin for the gas, then ONRR will determine the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under § 1206.143(a)(2).

§ 1206.143 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value or decide your value under § 1206.144.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the gas, residue gas, or gas plant products. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.144.

(c) ONRR may decide your value under § 1206.144 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by selling your gas, residue gas, or gas plant products at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest reasonable measures of market price, including, but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products; or

(3) ONRR cannot determine if you properly valued your gas, residue gas, or gas plant products under § 1206.141 or § 1206.142 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the gas, residue gas, or gas plant products.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of gas, residue gas, or gas plant products.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide your value under § 1206.144.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.144 How will ONRR determine the value of my gas for royalty purposes?

If ONRR decides to value your gas, residue gas, or gas plant products for royalty purposes under § 1206.143, or any other provision in this subpart, then ONRR will determine the value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality gas in the same field or nearby fields or areas.

(b) The value of like-quality residue gas or gas plant products from the same plant or area.

(c) Public sources of price or market information that ONRR deems to be reliable.

(d) Information available or reported to ONRR, including, but not limited to, on Form ONRR–2014 and Form ONRR–4054.

(e) Costs of transportation or processing if ONRR determines that they are applicable.

(f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the gas.

§ 1206.145 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your gas under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.146 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place gas, residue gas, and gas plant products in marketable condition and market the gas, residue gas, and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the gas, residue gas, and gas plant products in marketable condition or to market the gas.

§ 1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR does not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.148 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any gas produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.149.

§ 1206.149 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on gas, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.150 How do I determine royalty quantity and quality?

(a)(1) You must calculate royalties based on the quantity and quality of unprocessed gas as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(2) If you base the value of gas determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that

value for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant, even though residue gas and/or gas plant products may be in temporary storage.

(2) If you value residue gas and/or gas plant products determined under this subpart on a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease determined under paragraph (c) of this section, you must adjust that value for the differences in quantity and/or quality.

(c) You must determine the quantity of the residue gas and gas plant products attributable to a lease based on the following procedure:

(1) When you derive the net output of the processing plant from gas obtained from only one lease, you must base the quantity of the residue gas and gas plant products for royalty computation on the net output of the plant.

(2) When you derive the net output of a processing plant from gas obtained from more than one lease producing gas of uniform content, you must base the quantity of the residue gas and gas plant products allocable to each lease on the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content:

(i) You must determine the quantity of the residue gas allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained.

(ii) You must determine the net output of gas plant products allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) You may request prior ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, you must apply that method to all gas production from Federal leases that is processed in the same plant. You must do so beginning with the production month following the month when ONRR received your request to use another method.

(d)(1) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that you sustain before the royalty settlement meter or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(2) Except as provided in paragraph (d)(1) of this section and § 1202.151(c) of this chapter, you must pay royalties due on 100 percent of the volume determined under paragraphs (a) through (c) of this section. You may not reduce that determined volume for actual losses after you have determined the quantity basis, or for theoretical losses that you claim to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products, as provided in this subpart, less applicable allowances. You may not take any deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after you have determined the quantity basis or for theoretical losses that you claim to have taken place.

§ 1206.151 [Reserved]

§ 1206.152 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport residue gas, gas plant products, or unprocessed gas from the lease to the point off of the lease under § 1206.153 or § 1206.154, as applicable. You may not deduct transportation costs that you incur when moving a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1) You value unprocessed gas under § 1206.141(b) or residue gas and gas plant products under § 1206.142(b) based on a sale at a point off of the lease, unit, or communitized area where the residue gas, gas plant products, or unprocessed gas is produced; and

(2)(i) The movement to the sales point is not gathering.

(ii) For gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one product in a gaseous phase, you must allocate costs consistently and equitably to each of the products transported. Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all products in the gaseous phase (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on Form ONRR–2014.

(d) If you value unprocessed gas under § 1206.141(c) or residue gas and gas plant products under § 1206.142 (d), you may not take a transportation allowance.

(e)(1) Your transportation allowance may not exceed 50 percent of the value of the residue gas, gas plant products, or unprocessed gas as determined under § 1206.141 or § 1206.142.

(2) If ONRR approved your request to take a transportation allowance in

excess of the 50-percent limitation under former § 1206.156(c)(3), that approval is terminated as of January 1, 2017.

(f) You must express transportation allowances for residue gas, gas plant products, or unprocessed gas as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate are/is paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by transporting your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant products transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.153 or § 1206.154 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(h) You do not need ONRR's approval before reporting a transportation allowance.

§ 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in § 1206.152(g) and subject to the limitation in § 1206.152(e).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section:

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees that you or your affiliate paid to a pipeline, including charges or fees for unused firm capacity that you or your affiliate have not sold before you report your allowance. If you or your affiliate receive(s) a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you or your affiliate receive(s) a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on Form ONRR–2014 by the amount of that payment. You must modify Form ONRR–2014 by the amount received or credited for the affected reporting period and pay any resulting royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) *Gas Supply Realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers in order to implement the restructuring requirements of FERC Orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas-related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable, provided that such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* Theoretical losses are not deductible in transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC or State regulatory-approved tariff. If you or your affiliate receive(s) volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter;

(8) *Temporary storage services.* This includes short-duration storage services that market centers or hubs (commonly referred to as "parking" or "banking") offer or other temporary storage services that pipeline transporters provide, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or fewer.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 1206.146.

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you or your affiliate, as a shipper, to maintain under a transportation contract.

(11) *Hurricane surcharges.* You may deduct hurricane surcharges that you or your affiliate actually pay(s).

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off of the lease, for more than 30 days.

(2) *Aggregator/marketer fees.* This includes fees that you or your affiliate pay(s) to another person (including your affiliates) to market your gas, including purchasing and reselling the gas or finding or maintaining a market for the gas production.

(3) *Penalties that you or your affiliate incur(s) as a shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price that the pipeline pays to you or your affiliate for over-delivered volumes outside of the tolerances and the price that you or your affiliate receive(s) for over-delivered volumes within the tolerances.

(ii) *Scheduling penalties.* This includes penalties that you or your affiliate incur(s) for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties that you or your affiliate incur(s) (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees that you or your affiliate incur(s) for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees that you or your affiliate pay(s) to hub operators for administrative services (such as title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Fees paid to brokers.* This includes fees that you or your affiliate pay(s) to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees.

(6) *Fees paid to scheduling service providers.* This includes fees that you or your affiliate pay(s) to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees.

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for the sale or movement of production.

(8) *Other non-allowable costs.* Any cost you or your affiliate incur(s) for services that you are required to provide at no cost to the lessor, including, but not limited to, costs to place your gas, residue gas, or gas plant products into marketable condition disallowed under § 1206.146 and costs of boosting residue gas disallowed under § 1202.151(b).

(d) If you have no written contract for the transportation of gas, then ONRR will determine your transportation allowance under § 1206.144. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c)(1) To the extent not included in costs identified in paragraphs (e) through (g) of this section, if you or your affiliate incur(s) the actual transportation costs listed under § 1206.153(b)(2), (5), and (6) under your or your affiliate's non-arm's-length contract, you may include those costs in your calculations under this section. You may not include any of the other costs identified under § 1206.153(b).

(2) You may not include in your calculations under this section any of the non-allowable costs listed under § 1206.153(c).

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(ii) You may depreciate a transportation system only once with or without a change in ownership.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.155 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.156 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.158 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.157 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit, with interest.

(b) If you deduct a transportation allowance on Form ONRR–2014 that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported, you must pay late payment interest on the excess allowance amount taken from the date when that amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a transportation allowance against the sales value of the residue gas, gas plant products, or unprocessed gas instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.158 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit, plus interest.

§ 1206.159 What general processing allowances requirements apply to me?

(a)(1) When you value any gas plant product under § 1206.142(c), you may deduct from the value the reasonable, actual costs of processing.

(2) You do not need ONRR's approval before reporting a processing allowance.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. ONRR considers NGLs to be one product.

(c)(1) You may not apply the processing allowance against the value of the residue gas.

(2) The processing allowance deduction on the basis of an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under § 1206.142(c). Before you calculate the 66⅔-percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 1206.152.

(3) If ONRR approved your request to take a processing allowance in excess of the limitation in paragraph (c)(2) of this section under former § 1206.158(c)(3), that approval is terminated as of January 1, 2017.

(4) If ONRR approved your request to take an extraordinary cost processing allowance under former § 1206.158(d), ONRR terminates that approval as of January 1, 2017.

(d)(1) ONRR will not allow a processing cost deduction for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant.

(2) Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," ONRR will not allow processing cost deductions for such costs unless the acid gases removed are further processed into a gas plant product.

(i) In such event, you are eligible for a processing allowance determined under this subpart.

(ii) ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) ONRR may determine your processing allowance under § 1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length processing contract does not reflect the reasonable cost of the processing because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by processing your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a processing allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of processing costs, including, but not limited to, processing allowances reported to ONRR; or

(3) ONRR cannot determine if you properly calculated a processing allowance under § 1206.160 or § 1206.161 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

§ 1206.160 How do I determine a processing allowance if I have an arm's-length processing contract?

(a)(1) If you or your affiliate incur processing costs under an arm's-length processing contract, you may claim a processing allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and subject to the limitation in § 1206.159(c)(2).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b)(1) If your or your affiliate's arm's-length processing contract includes more than one gas plant product, and you can determine the processing costs for each product based on the contract, then you must determine the processing costs for each gas plant product under the contract.

(2) If your or your affiliate's arm's-length processing contract includes more than one gas plant product, and you cannot determine the processing costs attributable to each product from the contract, you must propose an allocation procedure to ONRR.

(i) You may use your proposed allocation procedure until ONRR issues its determination.

(ii) You must submit all relevant data to support your proposal.

(iii) ONRR will determine the processing allowance based upon your proposal and any additional information that ONRR deems necessary.

(iv) You must submit the allocation proposal within three months of claiming the allocated deduction on Form ONRR–2014.

(3) You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your or your affiliate's payments for processing under an arm's-length contract are not based on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(c) If you have no written contract for the arm's-length processing of gas, then ONRR will determine your processing allowance under § 1206.144. You may not use this paragraph (c) if you or your affiliate perform(s) your own processing.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length processing contract, including situations where you or your affiliate provide your own processing services. You must calculate your processing allowance based on your or your affiliate's reasonable, actual costs for processing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation and a return on undepreciated capital investment in accordance with paragraph (h)(1) of this section, or you may elect to use a cost equal to the initial depreciable capital investment in the processing plant under paragraph (h)(2) of this section. After you have elected to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (h)(1)(iii) of this section, after you have depreciated the processing plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the processing plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses may include the following:

(1) Maintenance of the processing plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the processing plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a processing plant only once with or without a change in ownership.

(iii)(A) To calculate a return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the processing plant multiplied by the rate of return that you determine under paragraph (h)(3) of this section.

(B) After you have depreciated a processing plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (h)(3) of this section.

(2) You may use as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (h)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

(i)(1) You must determine the processing allowance for each gas plant product based on your or your affiliate's reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles.

(2) You may not take an allowance for processing lease production that is not royalty-bearing.

(j) You may apply for an exception from the requirement to calculate actual costs under paragraphs (a) and (b) of this section.

(1) ONRR will grant the exception if:

(i) You have or your affiliate has arm's-length contracts for processing other gas production at the same processing plant; and

(ii) At least 50 percent of the gas processed annually at the plant is processed under arm's-length processing contracts.

(2) If ONRR grants the exception, you must use as your processing allowance the volume-weighted average prices charged to other persons under arm's-length contracts for processing at the same plant.

§ 1206.162 What are my reporting requirements under an arm's-length processing contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on arm's-length processing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length processing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.163 What are my reporting requirements under a non-arm's-length processing contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on non-arm's-length processing costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length processing facilities or arrangements, you must base your initial deduction on estimates of allowable gas processing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the processing plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar processing plants.

(3) Section 1206.165 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.161(j) to use an exception to the requirement to calculate your actual processing costs, you must follow the reporting requirements of § 1206.162.

§ 1206.164 What interest and penalties apply if I improperly report a processing allowance?

(a)(1) If ONRR determines that you took an unauthorized processing allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your processing allowance, you may be entitled to a credit, with interest.

(b) If you deduct a processing allowance on Form ONRR–2014 that exceeds 66⅔ percent of the value of a gas plant product, you must pay late payment interest on the excess allowance amount taken from the date when that amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a processing allowance against the sales value of a gas plant product instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.165 What reporting adjustments must I make for processing allowances?

(a) If your actual processing allowance is less than the amount that you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual processing allowance is greater than the amount that you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit, plus interest.

■ 8. Revise subpart F to read as follows:

Subpart F—Federal Coal

Sec.
1206.250 What is the purpose and scope of this subpart?
1206.251 How do I determine royalty quantity and quality?
1206.252 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.253 How will ONRR determine if my royalty payments are correct?
1206.254 How will ONRR determine the value of my coal for royalty purposes?
1206.255 What records must I keep in order to support my calculations of royalty under this subpart?
1206.256 What are my responsibilities to place production into marketable condition and to market production?
1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
1206.258 How do I request a valuation determination?
1206.259 Does ONRR protect information that I provide?
1206.260 What general transportation allowance requirements apply to me?
1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?
1206.262 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
1206.263 What are my reporting requirements under an arm's-length transportation contract?
1206.264 What are my reporting requirements under a non-arm's-length transportation contract?
1206.265 What interest and penalties apply if I improperly report a transportation allowance?
1206.266 What reporting adjustments must I make for transportation allowances?
1206.267 What general washing allowance requirements apply to me?
1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?
1206.269 How do I determine washing allowances if I do not have an arm's-length washing contract?
1206.270 What are my reporting requirements under an arm's-length washing contract?
1206.271 What are my reporting requirements under a non-arm's-length washing contract?
1206.272 What interest and penalties apply if I improperly report a washing allowance?
1206.273 What reporting adjustments must I make for washing allowances?

Subpart F—Federal Coal

§ 1206.250 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Federal coal leases. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) The terms "you" and "your" in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.251 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Federal coal leases under 43 CFR part 3000. You must report coal quantity on appropriate forms required in 30 CFR part 1210—Forms and Reports.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.252 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract, less an applicable transportation allowance determined under §§ 1206.260 through 1206.262 and washing allowance under §§ 1206.267 through 1206.269. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.260 through 1206.262 and §§ 1206.267 through 1206.269 and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.354.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.254.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.258(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.253(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.254.

§ 1206.253 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.254.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties due, plus late payment interest calculated under § 1218.202 of this chapter, or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration that is actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.254.

(c) ONRR may decide to value your coal under § 1206.254 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.252 for any reason, including, but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent any contract revisions or amendments, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You

may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.254.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.254 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.253, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, the same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable, including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including, but not limited to, on Form ONRR–4430.

(d) Costs of transportation or washing, if ONRR determines that they are applicable.

(e) Any other information that ONRR deems relevant regarding the particular lease operation or the salability of the coal.

§ 1206.255 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.256 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract in order to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

§ 1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.258 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.259.

§ 1206.259 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the

Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.260 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under § 1206.261 or § 1206.262, as applicable.

(2) You do not need ONRR's approval before reporting a transportation allowance for costs incurred.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.252;

(2) You transport the coal from a Federal lease to a sales point, which is remote from both the lease and mine; or

(3) You transport the coal from a Federal lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Federal and non-Federal leases, you may not disproportionately allocate transportation costs to Federal lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Federal lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Federal lease, you must allocate transportation costs to each Federal lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Federal lease production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR–4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per-short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per-short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.261 or § 1206.262 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.262 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a transportation system to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.263 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.264 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.266 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.265 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.266 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.267 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.252, you may take a washing allowance for the reasonable, actual costs to wash the coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) You do not need ONRR's approval before reporting a washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Federal leases. You must allocate washing costs to washed coal attributable to each Federal lease by multiplying the input ratio determined under § 1206.251(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing

contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.267 through 1206.269 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance when you sell the washed coal and report and pay royalties.

§ 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no written contract for the arm's-length washing of coal, then ONRR will determine your washing allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.269 How do I determine washing allowances if I do not have an arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. You must calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the wash plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the wash plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a wash plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.270 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.271 What are my reporting requirements under a non-arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length washing facilities or arrangements, you must base your initial deduction on estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(3) Section 1206.273 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.272 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.273 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount that you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

■ 9. Revise subpart J to read as follows:

Subpart J—Indian Coal

1206.450 What is the purpose and scope of this subpart?
1206.451 How do I determine royalty quantity and quality?
1206.452 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.453 How will ONRR determine if my royalty payments are correct?
1206.454 How will ONRR determine the value of my coal for royalty purposes?
1206.455 What records must I keep in order to support my calculations of royalty under this subpart?
1206.456 What are my responsibilities to place production into marketable condition and to market production?
1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
1206.458 How do I request a valuation determination?
1206.459 Does ONRR protect information that I provide?
1206.460 What general transportation allowance requirements apply to me?
1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?
1206.462 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
1206.463 What are my reporting requirements under an arm's-length transportation contract?
1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?
1206.465 What interest and penalties apply if I improperly report a transportation allowance?
1206.466 What reporting adjustments must I make for transportation allowances?
1206.467 What general washing allowance requirements apply to me?
1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?
1206.469 How do I determine washing allowances if I do not have an arm's-length washing contract?
1206.470 What are my reporting requirements under an arm's-length washing contract?
1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?
1206.472 What interest and penalties apply if I improperly report a washing allowance?
1206.473 What reporting adjustments must I make for washing allowances?

Subpart J—Indian Coal

§ 1206.450 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Indian Tribal coal leases and coal leases on land held by individual Indian mineral owners. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) The terms "you" and "your" in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

(e) The regulations in this subpart, intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases, are discharged under the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 1206.451 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Indian coal leases. You must report coal quantity on appropriate forms required in 30 CFR part 1210.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed

coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.452 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under §§ 1206.460 through 1206.462 and washing allowance under §§ 1206.467 through 1206.469. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.460 through 1206.462 and §§ 1206.467 through 1206.469 and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.352.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.454.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.458(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.453(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.454.

§ 1206.453 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.454.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties plus late payment interest calculated under § 1218.202 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.454.

(c) ONRR may decide to value your coal under § 1206.454, if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low, if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.452 for any reason, including, but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.454.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.454 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.454, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable, including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including but not limited to, on Form ONRR–4430.

(d) Costs of transportation or washing, if ONRR determines they are applicable.

(e) Any other information that ONRR deems to be relevant regarding the particular lease operation or the salability of the coal.

§ 1206.455 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR, the representative of the Indian lessor, the Inspector General of the Department of the Interior, or other persons authorized to receive such information. Such data may include arm's-length sales and sales quantity data for like-quality coal that you or your affiliate sold, purchased, or otherwise obtained from the same mine, nearby mines, same region, or other regions. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.456 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

§ 1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.458 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance that ONRR issues is not binding on ONRR, Tribes, individual Indian mineral owners, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.459.

§ 1206.459 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.460 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under § 1206.461 or § 1206.462, as applicable.

(2) Before you may take any transportation allowance, you must submit a completed page 1 of the Coal Transportation Allowance Report (Form ONRR–4293), under §§ 1206.463 and

1206.464. You may claim a transportation allowance retroactively for a period of not more than three months prior to the first day of the month when ONRR receives your Form ONRR–4293.

(3) You may not use a transportation allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your transportation allowance.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.452;

(2) You transport the coal from an Indian lease to a sales point that is remote from both the lease and mine; or

(3) You transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Indian and non-Indian leases, you may not disproportionately allocate transportation costs to Indian lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Indian lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Indian lease, you must allocate transportation costs to each Indian lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Indian lease's production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR–4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid into a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.461 or § 1206.462 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.462 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.463 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must submit page 1 of the initial Form ONRR–4293 prior to, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form ONRR–4430.

(2) The initial Form ONRR–4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period when ONRR first authorized you to deduct a transportation allowance and for succeeding periods, you must submit the entire Form ONRR–4293 by the earlier of the following:

(i) Within three months after the end of the calendar year

(ii) After the termination, modification, or amendment of the applicable contract or rate

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR–4293 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4293 by the end of the month when the Form ONRR–4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial form on estimated costs.

(2) The initial Form ONRR–4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a Form ONRR–4293 based on estimates, you must submit another, completed Form ONRR–4293 containing the actual costs for that calendar year.

(ii) If the transportation continues, you must include on Form ONRR–4293 your estimated costs for the next calendar year.

(A) You must base the estimated transportation allowance on the actual costs for the previous reporting period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR–4293 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length transportation facilities or arrangements, on your initial ONRR–4293 form, you must include estimates of the allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(e) Upon ONRR's request, you must submit all data used to prepare your ONRR–4293 form. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.466 applies when you amend your Form ONRR–4293 based on the actual costs.

§ 1206.465 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.466 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.467 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.452, you may take a washing allowance for the reasonable, actual costs to wash coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) Before you may take any deduction, you must submit a completed page 1 of the Coal Washing Allowance Report (Form ONRR–4292), under §§ 1206.470 and 1206.471. You may claim a washing allowance retroactively for a period of not more than three months prior to the first day of the month when you have filed Form ONRR–4292 with ONRR.

(3) You may not use a washing allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Indian leases. You must allocate washing costs to washed coal attributable to each Indian lease by multiplying the input ratio determined under § 1206.451(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid into a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance to be unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.467 through 1206.469 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance if you sell the washed coal and report and pay royalties.

§ 1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no contract for the washing of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c), if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then:

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.469 How do I determine washing allowances if I do not have an non-arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. Calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the wash plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for the purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.470 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must file an initial Form ONRR–4292 prior to, or at the same time as, the washing allowance determined under an arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4292 by the end of the month when the Form ONRR–4430 is due, ONRR will consider the form to be received in a timely manner.

(2) The initial Form ONRR–4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period that ONRR first authorized you to deduct a washing allowance, and for succeeding periods, you must submit the entire Form ONRR–4292 by the earlier of the following:

(i) Within three months after the end of the calendar year.

(ii) After the termination, modification, or amendment of the applicable contract or rate.

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR–4292 prior to, or at the same time as, the washing allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4292 by the end of the month when the Form ONRR–4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial reporting on estimated costs.

(2) The initial Form ONRR–4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a Form ONRR–4292, you must submit another, completed Form ONRR–4292 containing the actual costs for that calendar year.

(ii) If coal washing continues, you must include on Form ONRR–4292 your estimated costs for the next calendar year.

(A) You must base the estimated coal washing allowance on the actual costs for the previous period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR–4292 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length washing facilities or arrangements on your initial Form ONRR–4292, you must include estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(e) Upon ONRR's request, you must submit all data that you used to prepare your Forms ONRR–4293. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.472 applies when you amend your Form ONRR–4292 based on the actual costs.

§ 1206.472 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.473 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount that you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

[FR Doc. 2016–15420 Filed 6–30–16; 8:45 am]

BILLING CODE 4335–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 127 July 1, 2016

Part III

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2011–BT–TP–0071]

RIN 1904–AC67

Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule adopts a test procedure for integrated light-emitting diode (LED) lamps (hereafter referred to as LED lamps) to support the implementation of labeling provisions by the Federal Trade Commission (FTC), as well as the ongoing general service lamps rulemaking, which includes LED lamps. The final rule adopts test procedures for determining the lumen output, input power, lamp efficacy, correlated color temperature (CCT), color rendering index (CRI), power factor, lifetime, and standby mode power for LED lamps. The final rule also adopts a definition for time to failure to support the definition of lifetime. This final rule incorporates by reference four industry standards, including two recently published industry standards that describe a process for taking lumen maintenance measurements and projecting those measurements for use in the lifetime test method.

DATES: The effective date of this rule is August 1, 2016. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register as of August 1, 2016. Representations must be based on testing in accordance with the final rule starting December 28, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *regulations.gov*. All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/18*. This Web page will contain a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Lucy deButts at (202) 287–1604 or by email: *Lucy.deButts@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *light_emitting_diodes@ee.doe.gov*.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into part 430 the following industry standards:

1. IEC[1] 62301, "Household electrical appliances—Measurement of standby power" (Edition 2.0, 2011–01).

2. ANSI[2]/IES[3] RP–16–2010, "Nomenclature and Definitions for Illuminating Engineering," approved July 15, 2005.

3. IES LM–79–08, "Approved Method for the Electrical and Photometric Measurements of Solid-State Lighting Products," approved December 31, 2007.

4. IES LM–84–14, "Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires," approved March 31, 2014.

5. IES TM–28–14, "Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires," approved May 20, 2014.

You may purchase a copy of IEC 62301 from International Electrotechnical Commission, available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://webstore.ansi.org*.

Copies of IES standards may be obtained from the Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, 212–248–5000, or go to *http://www.iesna.org*. Industry standards can also be reviewed in person at U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. For further information on accessing IBR standards, contact Ms. Lucy deButts at (202) 287–1604 or by email: *Lucy.deButts@ee.doe.gov*.

See section IV.M for a further discussion of these standards.

Table of Contents

I. Authority and Background
II. Synopsis of the Final Rule
III. Discussion
  A. Scope of Applicability
  B. Industry Standards Incorporated by Reference
  C. Adopted Approach for Determining Lumen Output, Input Power, Lamp Efficacy, Correlated Color Temperature, Color Rendering Index, and Power Factor
  1. Test Conditions
  2. Test Setup
  3. Test Method
  D. Adopted Approach for Lifetime Measurements
  1. Test Conditions
  2. Test Setup
  3. Test Method
  4. Projection Method
  E. Adopted Approach for Standby Mode Power
  F. Basic Model, Minimum Sample Size, and Determination of Represented Values
  1. Basic Model
  2. Minimum Sample Size
  3. Determination of Represented Values
  G. Rounding Requirements
  1. Correlated Color Temperature
  2. Power Factor
  H. Interaction With ENERGY STAR
  I. Laboratory Accreditation
  J. Certification
  K. Effective and Compliance Date
  L. Ceiling Fan Light Kits Using LED Lamps
IV. Procedural Issues and Regulatory Review
  A. Review Under Executive Order 12866
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act of 1995
  D. Review Under the National Environmental Policy Act of 1969
  E. Review Under Executive Order 13132
  F. Review Under Executive Order 12988
  G. Review Under the Unfunded Mandates Reform Act of 1995
  H. Review Under the Treasury and General Government Appropriations Act, 1999
  I. Review Under Executive Order 12630
  J. Review Under Treasury and General Government Appropriations Act, 2001
  K. Review Under Executive Order 13211
  L. Review Under Section 32 of the Federal Energy Administration Act of 1974
  M. Description of Standards Incorporated by Reference
  N. Congressional Notification
V. Approval of the Office of the Secretary

I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act of 2015

---

[1] International Electrotechnical Commission.

[2] American National Standards Institute

[3] Illuminating Engineering Society.

(EEIA 2015), Public Law 114–11 (April 30, 2015). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles."

Under EPCA, this program consists of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. This rulemaking establishes test procedures that manufacturers of integrated LED lamps (hereafter referred to as "LED lamps") must use to meet two requirements, namely, to: (1) Satisfy any future energy conservation standards for general service LED lamps, and (2) meet obligations under labeling requirements for LED lamps promulgated by the Federal Trade Commission (FTC).

First, test procedures in this rulemaking would be used to assess the performance of LED lamps relative to any potential energy conservation standards in a future rulemaking that includes general service LED lamps. DOE is developing energy conservation standards for general service lamps (GSLs), a category of lamps that includes general service LED lamps. 79 FR 73503 (Dec. 11, 2014).

Second, this rulemaking supports obligations under labeling requirements promulgated by FTC under section 324(a)(6) of EPCA (42 U.S.C. 6294(a)(6)). The Energy Independence and Security Act of 2007 (EISA 2007) section 321(b) amended EPCA (42 U.S.C. 6294(a)(2)(D)) to direct FTC to consider the effectiveness of lamp labeling for power levels or watts, light output or lumens, and lamp lifetime. This rulemaking supports FTC's determination that LED lamps, which had previously not been labeled, require labels under EISA section 321(b) and 42 U.S.C. 6294(a)(6) in order to assist consumers in making purchasing decisions. 75 FR 41696, 41698 (July 19, 2010).

DOE previously published four **Federal Register** documents pertaining to the test procedure for LED lamps. On April 9, 2012, DOE published a test procedure NOPR (hereafter the April 2012 NOPR). 77 FR 21038. Following the publication of the NOPR, DOE held a public meeting on May 3, 2012, to receive feedback from interested parties. On June 3, 2014, DOE published a test procedure SNOPR (hereafter the June 2014 SNOPR) primarily revising its proposal for lifetime measurements. 79 FR 32020. Then, on June 26, 2014, DOE published a second SNOPR (hereafter the lifetime SNOPR) revising the definition of lifetime for LED lamps. 79 FR 36242. Finally, on July 9, 2015, DOE published a third SNOPR (hereafter July 2015 SNOPR) adding a method for determining power factor and revising the proposed method of measuring and projecting the time to failure of integrated LED lamps. 80 FR 39644 (July 9, 2015).

II. Synopsis of the Final Rule

This final rule adopts methods for determining lumen output, input power, lamp efficacy, correlated color temperature (CCT), color rendering index (CRI), power factor, lifetime, and standby power and for measuring and projecting the time to failure of integrated LED lamps.

Representations of energy efficiency must be based on testing in accordance with this rulemaking within 180 days after the publication of the final rule.

III. Discussion

A. Scope of Applicability

EPCA defines an LED as a p-n junction[4] solid-state device, the radiated output of which, either in the infrared region, visible region, or ultraviolet region, is a function of the physical construction, material used, and exciting current[5] of the device. (42 U.S.C. 6291(30)(CC)) In the June 2014 SNOPR, DOE stated that this rulemaking applies to LED lamps that meet DOE's proposed definition of an integrated LED lamp, which is based on the term as defined by ANSI/IES RP–16–2010. This standard defines an integrated LED lamp as an integrated assembly that comprises LED packages (components) or LED arrays (modules) (collectively referred to as an LED source), an LED driver, an ANSI standard base, and other optical, thermal, mechanical and electrical components (such as phosphor layers, insulating materials, fasteners to hold components within the lamp together, and electrical wiring). The LED lamp is intended to connect directly to a branch circuit through a corresponding ANSI standard socket. 79 FR 32020, 32021 (June 3, 2014).

DOE received comments supporting the LED lamps test procedure. The California Investor Owned Utilities (hereafter referred to as CA IOUs) expressed approval for the LED lamps test procedure rulemaking and noted the importance of establishing a test procedure to support the adoption of high quality LED lamps. (CA IOUs, No. 44 pp. 1, 7)[6] DOE appreciates the supporting comments from CA IOUs. The intent of a comprehensive test procedure is to produce consistent and repeatable test results.

B. Industry Standards Incorporated by Reference

In the July 2015 SNOPR, DOE proposed incorporating by reference four industry standards to support the proposed definitions and test methods for LED lamps. 80 FR 39644 (July 9, 2015). The National Electrical Manufacturers Association (hereafter referred to as NEMA) and Philips Lighting (hereafter referred to as Philips) commented that they disagreed with copying portions of text from industry standards protected under copyright (*e.g.*, IES LM–80 or IES LM–84) directly into the Code of Federal Regulations. NEMA and Philips stated that DOE should adopt industry standards in their entirety without modification instead of incorporating individual sections, noting that this would reduce the risk of misinterpretation and confusion during testing when interrelated sections are omitted. NEMA concluded that incorporating the full standards by reference is more appropriate because the standards are reasonably available, are the result of industry consensus, and provide full context for the reader. (NEMA, No. 42 at pp. 2–3; Philips, No. 41 at p. 3)

While DOE's proposed language in Appendix BB to subpart B of part 430 references sections of industry standards, it does not copy text from those standards. Rather, DOE provides comprehensive test procedures for multiple test metrics and, in doing so, DOE often has to clarify, limit, or add further specification to industry standards that are referenced to ensure a consistent, repeatable result. Therefore, instead of incorporating an industry standard in its entirety, DOE references the relevant sections of the industry standard and clearly states any directions that differ from those in the industry standard. For example, DOE references sections 5.2 and 5.4 of IES LM–84–14 to specify power supply requirements for lifetime measurements. However, DOE does not reference section 5.3 of the industry standard in the test procedure because it is listed as optional by IES and lacks specific restrictions regarding power supply impedance. Selectively referencing relevant sections of industry standards in this way ensures a consistent, repeatable test procedure. Thus, DOE adopts this approach in the final rule.

---

[4] P-n junction is the boundary between p-type and n-type material in a semiconductor device, such as LEDs. P-n junctions are diodes, active sites where current can flow readily in one direction but not in the other direction.

[5] Exciting current is the current passing through an LED chip during steady-state operation.

[6] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for integrated LED lamps (Docket No. EERE–2011–BT–TP–0071), which is maintained at *www.regulations.gov*. This notation indicates that the statement preceding the reference is in document number 44 filed in the docket for the integrated LED lamps test procedure rulemaking, and appears at pages 1 and 7 of that document.

C. Adopted Approach for Determining Lumen Output, Input Power, Lamp Efficacy, Correlated Color Temperature, Color Rendering Index, and Power Factor

IES LM–79–08 specifies the methodology for measuring lumen output, input power, CCT, and CRI for LED lamps. IES LM–79–08 also specifies the test conditions and setup at which the measurements and calculations must be performed. The July 2015 SNOPR proposed to reference IES LM–79–08 for determining lumen output, input power, CCT, CRI, and power factor of LED lamps, with some modifications. 80 FR at 39645. Power factor is not described directly in IES LM–79–08, but the measurement values necessary for calculating power factor are specified. Sections III.C.1 through III.C.3 discuss comments received on this proposal.

1. Test Conditions

In the July 2015 SNOPR, DOE proposed that the ambient conditions for testing LED lamps be as specified in section 2.0[7] of IES LM–79–08. 80 FR at 39645–39646. These conditions include provisions for setup and ambient temperature control, as well as air movement requirements. Both are discussed in further detail in the following paragraphs.

Section 2.2 of IES LM–79–08 specifies that photometric measurements must be taken at an ambient temperature of 25 degrees Celsius (°C) ± 1 °C, and that the temperature must be measured at a point not more than one meter from the LED lamp and at the same height as the lamp. The standard requires that the temperature sensor that is used for measurements be shielded from direct optical radiation from the lamp or any other source to reduce the impact of radiated heat on the ambient temperature measurement.

In the July 2015 SNOPR, DOE noted that the operating temperature of LED lamps varies depending on the application for which they are installed. However, testing at an ambient temperature of 25 °C ± 1 °C is consistent with other lighting products such as general service fluorescent lamps (GSFLs), compact fluorescent lamps (CFLs), and incandescent reflector lamps (IRLs). Measuring at an ambient temperature of 25 °C ± 1 °C will enable DOE, industry, and consumers to compare general service lamp products across different technologies. This setup for measuring and controlling ambient temperature is appropriate for testing because it requires that the lamp be tested at room temperature and in an environment that is commonly used for testing other lighting technologies. 80 FR at 39646.

In the July 2015 SNOPR, DOE also proposed that the requirement for air movement around the LED lamp be as specified in section 2.4 of IES LM–79–08, which requires that the airflow around the LED lamp be such that it does not affect the lumen output measurements of the tested lamp. This requirement ensures that air movement is minimized to acceptable levels and applies to lamps measured in both active mode and standby mode. *Id.*

DOE did not receive any comments on the proposed ambient condition requirements and therefore adopts them as described in this final rule.

2. Test Setup

a. Power Supply

In the July 2015 SNOPR, DOE proposed that power supply characteristics be as specified in section 3.0 of IES LM–79–08. 80 FR at 39666. Section 3.1 specifies that the alternating current (AC) power supply must have a sinusoidal voltage waveshape at the input frequency required by the LED lamp such that the RMS summation of the harmonic components does not exceed 3.0 percent of the fundamental frequency while operating the LED lamp. Section 3.2 requires, in part, that the voltage of the AC power supply (RMS voltage) or direct current (DC) power supply (instantaneous voltage) applied to the LED lamp be regulated to within ±0.2 percent under load.

DOE did not receive any comments on the proposed power supply requirements and therefore adopts them as described in this final rule.

b. Electrical Settings

In the July 2015 SNOPR, DOE proposed to test LED lamps according to the electrical settings as specified in section 7.0 of IES LM–79–08. Section 7.0 specifies, in part, that the LED lamp must be operated at the rated voltage throughout testing. DOE also specified that, for an integrated LED lamp with multiple rated voltages including 120 volts, the lamp must be operated at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, the lamp must be operated at the highest rated input voltage. Additional tests may be conducted at other rated voltages. Section 7.0 also requires the LED lamp to be operated at the maximum input power during testing. If multiple modes occur at the same maximum input power (such as variable CCT or CRI), the manufacturer can select any of these modes for testing; however, all active-mode measurements must be taken at the same selected settings. The manufacturer must also indicate in the test report which mode was selected for testing and include sufficient detail such that another laboratory could operate the lamp in the same mode. *Id.*

Also in the July 2015 SNOPR, DOE proposed instructions for the electrical instrumentation setup to be as specified in section 8.0 of IES LM–79–08. Section 8.1 specifies that for DC-input LED lamps, a DC voltmeter and a DC ammeter are to be connected between the DC power supply and the LED lamp. The voltmeter is to be connected across the electrical power inputs of the LED lamp. For AC-input LED lamps, an AC power meter is to be connected between the AC power supply and the LED lamp, and AC power, in addition to input voltage and current, is measured. Section 8.2 specifies calibration uncertainties for the instruments used for measuring AC input power, voltage, and current. It also prescribes the calibration uncertainty for DC voltage and current. The calibration uncertainty of the AC power meter is to be less than or equal to 0.5 percent and that of the instruments used for AC voltage and current is to be less than or equal to 0.2 percent. Lastly, the calibration uncertainty of the meter used for DC voltage and current is to be less than or equal to 0.1 percent. *Id.*

DOE did not receive any comments on the proposed electrical settings during testing and therefore adopts them as described in this final rule.

c. Operating Orientation

In the July 2015 SNOPR, DOE proposed that LED lamps be positioned such that an equal number of units are oriented in the base-up and base-down orientations during testing. DOE collected test data for several LED lamps tested in base-up, base-down, and horizontal orientations, and analyzed the data to determine the variation of input power, lumen output, CCT, and CRI in each of these three orientations. The analysis of the test data revealed that some lamp models exhibited variation between the three orientations.

---

[7] IES standards use the reference 2.0, 3.0, etc. for each primary section heading. Sub-sections under each of these sections are referenced as 2.1, 2.2, 3.1, 3.2, etc. This rule refers to each IES section exactly as it is referenced in the IES standard.

Of the three orientations, analysis indicated that the base-up and base-down orientations represent the best (highest lumen output) and worst (lowest lumen output) case scenarios, respectively. Therefore, there is no need to test horizontally. Testing LED lamps in the base-up and base-down orientations would apply to lamps measured in both active mode and standby mode. 80 FR at 39646. For an LED lamp that is developed, designed, labeled, and advertised as restricted to a particular position, DOE proposed that the lamp be tested in only the manufacturer-specified position. *Id.*

DOE did not receive any comments on the proposed operating orientation requirements and therefore adopts them as described in this final rule.

3. Test Method

a. Stabilization Criteria

DOE proposed in the July 2015 SNOPR that integrated LED lamps be stabilized prior to measurement as specified in section 5.0 of IES LM–79–08. The ambient conditions and operating orientation while stabilizing is as specified in sections III.C.1 and III.C.2. DOE also proposed in the July 2015 SNOPR that stability of the LED lamp is reached when the stabilization variation [(maximum—minimum)/minimum] of at least three readings of the input power and lumen output over a period of 30 minutes, taken 15 minutes apart, is less than 0.5 percent. DOE included this calculation to add clarification to the method specified in section 5.0 of IES LM–79–08. DOE also proposed that stabilization of multiple products of the same model can be carried out as specified in section 5.0 of IES LM–79–08. 80 FR at 39666.

DOE did not receive any comments on the proposed stabilization criteria and therefore adopts them as described in this final rule.

b. Input Power Metric

DOE proposed in the July 2015 SNOPR that input power (in watts), input voltage (in volts), and input current (in amps) be measured as specified in section 8.0 of IES LM–79–08. For DC-input LED lamps, the product of the measured voltage and the current gives the input electrical power. For AC-input LED lamps, the input power is measured using a power meter connected between the AC power supply and the LED lamp. *Id.*

DOE did not receive any comments on the proposed test method for measuring input power and therefore adopts it as described in this final rule.

c. Lumen Output Metric

DOE proposed in the July 2015 SNOPR that goniophotometers may not be used for photometric measurements. As a result, DOE proposed in the July 2015 SNOPR that the method for measuring lumen output be as specified in sections 9.1 and 9.2 of IES LM–79–08, and proposed the same lumen output measurement method for all LED lamps, including directional[8] LED lamps. 80 FR at 39646–47.

DOE did not receive any comments on the proposed test method for measuring lumen output and therefore adopts it as described in this final rule.

d. Lamp Efficacy Metric

As discussed in section I, this test procedure will support any potential future energy conservation standards for general service LED lamps, which may include efficacy as a metric for setting standards. Accordingly, in the July 2015 SNOPR, DOE proposed that the efficacy of an LED lamp (in units of lumens per watt) be calculated by dividing measured initial lamp lumen output in lumens by the measured lamp input power in watts. Providing a calculation for efficacy of an LED lamp does not increase testing burden because the test procedure already includes metrics for input power and lumen output. This approach also increases clarity as it specifies the calculation using the naming conventions for measured parameters established by DOE. *Id* at 39647.

DOE did not receive any comments on the proposed calculation for lamp efficacy and therefore adopts it as described in this final rule.

e. Measuring Correlated Color Temperature

In the July 2015 SNOPR, DOE proposed that the CCT of an LED lamp be calculated as specified in section 12.4 of IES LM–79–08. The CCT is determined by measuring the relative spectral distribution, calculating the chromaticity coordinates, and then matching the chromaticity coordinates to a particular CCT of the Planckian radiator. DOE did not propose a nominal CCT method because nominal CCT values do not address all regions of the chromaticity diagram. DOE proposed that the setup for measuring the relative spectral distribution, which is required to calculate the CCT of the LED lamp, be as specified in section 12.0 of IES LM–79–08. That section describes the test method to calculate CCT using a sphere-spectroradiometer system and a spectroradiometer or colorimeter system. Furthermore, DOE also proposed in the July 2015 SNOPR to require all photometric measurements (including CCT) be carried out in an integrating sphere, and that goniophotometer systems must not be used. Therefore, DOE proposed that the instrumentation used for CCT measurements be as described in section 12.0 of IES LM–79–08 with the exclusion of sections 12.2 and 12.5 of IES LM–79–08. *Id.*

DOE did not receive any comments on the proposed test method for measuring CCT and therefore adopts it as described in this final rule.

f. Measuring Color Rendering Index

In the July 2015 SNOPR, DOE proposed to add a requirement that the CRI of an LED lamp be determined as specified in section 12.4 of IES LM–79–08, and to require all photometric measurements (including CRI) be carried out in an integrating sphere. As proposed, the setup for measuring the relative spectral distribution, which is required to calculate the CRI of the LED lamp, would be as specified in section 12.0 of IES LM–79–08 with the exclusion of sections 12.2 and 12.5 of IES LM–79–08, as goniophotometer systems would not be used. Section 12.4 of IES LM–79–08 also specifies that CRI be calculated according to the method defined in the International Commission on Illumination (CIE) 13.3–1995.[9] There are currently no industry standards that define or provide instructions for color quality metrics other than the CRI of LED lamps. DOE proposed that the test procedure for LED lamps include measurement methods for CRI in order to support the upcoming general service lamps energy conservation standard rulemaking. 80 FR at 39647–48.

NEMA requested DOE to remove test requirements for CRI from the LED lamps test procedure, citing that they are not necessary for FTC labeling purposes. NEMA noted that because DOE has removed other parameters from the test procedure to be consistent with FTC labeling parameters, it should remove CRI as well. NEMA also commented that limiting the parameters addressed in this test procedure to just those needed for the FTC Lighting Facts Label will shorten the time to complete this test procedure rulemaking and enable the FTC to utilize this test procedure earlier. (NEMA, No. 42 at p. 3)

---

[8] Directional lamps are designed to provide more intense light to a particular region or solid angle. Light provided outside that region is less useful to the consumer, as directional lamps are typically used to provide contrasting illumination relative to the background or ambient light.

[9] "Method of Measuring and Specifying Colour Rendering Properties of Light Sources." Approved by CIE in 1995.

Removing parameters already addressed in this rulemaking to date will not shorten the time needed to complete the final rule. DOE's proposals have already received several rounds of comments and the majority of proposals in the most recent SNOPR received no comments from stakeholders, indicating general agreement.

DOE's proposal in the April 2012 NOPR was originally intended to support the FTC Lighting Facts program. 77 FR 21040. However, over the course of this rulemaking, DOE expanded the scope of the test procedure to also support the general service lamps energy conservation standards rulemaking. While FTC does not require CRI to be reported on the FTC Lighting Facts Label, EPA has requirements for CRI in Version 2.0 of the ENERGY STAR Program Requirements: Product Specification for Lamps (Light Bulbs) (hereafter "ENERGY STAR Lamps Specification V2.0")[10] and the version currently in effect (hereafter ENERGY STAR Lamps Specification V1.1).[11] Because the test methods for CRI described earlier have been reviewed and vetted by industry stakeholders, DOE maintained CRI in this test procedure in support of the ENERGY STAR Lamps Specification V2.0.

The Appliance Standards Awareness Project, Natural Resources Defense Council and the American Council for an Energy-Efficient Economy (hereafter referred to as EEAs) and NEMA both noted an updated industry standard for color, IES TM–30–15, in their comments regarding color testing. NEMA commented that TM–30–15 is intended to identify and better quantify consumer preferences regarding color rendition, and that DOE should not set a minimum standard using the metric described in this standard until it is finalized. (NEMA, No. 42 at p. 2) EEAs indicated that the new standard is intended to eventually replace CRI, and while there should be no immediate minimum value specified in a rulemaking, manufacturers should be required to provide color rendering information based on TM–30–15. (EEAs, No. 43 at pp. 3–4)

Having reviewed the newly published industry standard, DOE will not require manufacturers to provide color rendering information based on TM–30–15 at this time. DOE notes that the metrics described in the standard are not required by DOE, FTC, or ENERGY STAR. DOE will continue to monitor industry acceptance of TM–30–15 and the requirements for ENERGY STAR. DOE can initiate a rulemaking and incorporate TM–30–15 at a later time, if needed.

CA IOUs also requested that DOE modify the LED lamps test procedure to require manufacturers to report the entire set of test color samples, R1 through R14, when measuring and reporting CRI. CA IOUs described the process for calculating CRI, which is an average color metric based on the first eight test color samples, R1 through R8. CA IOUs asked DOE to specify the reporting of the entire set of test color samples because the average CRI value may not always accurately depict color performance of a lamp. In other words, lamps can have similar CRI values but the color performance may vary depending on the desired design criteria of the consumer. CA IOUs presented an example of two lamps with similar light output, CCT, and CRI, but that have significantly different R8 values. Each lamp would have a different saturation in the pink/red hue, leading to varying consumer satisfaction depending on the desired application. Therefore, CA IOUs recommended DOE to specifically include the measurements of R1 through R14 in the DOE test procedure to enhance consumer satisfaction. (CA IOUs, No. 44 at pp. 6–7)

DOE understands the importance of consumer satisfaction regarding lamp color. Although FTC does not require CRI to be reported, and DOE may not require the metric in its rulemaking for general service lamps, ENERGY STAR has minimum CRI requirements for both CFL and LED lamps. The requirements are in terms of the average metric rather than the individual values of the first eight color samples. Therefore, although the referenced standard for CRI provides a method for measuring the fourteen different color samples described by the CA IOUs, DOE is providing certification provisions in this test procedure for only the average metric based on the first eight values (*i.e.*, CRI). As described in a previous response in this section, DOE will continue to monitor the use of color metrics in the industry and can revise the certification provisions for color rendering values at a future point in time.

g. Measuring Power Factor

In the July 2015 SNOPR, DOE proposed to include a test procedure for power factor, because power quality can impact energy consumption. Power factor is a dimensionless ratio of real power to apparent power that applies only to AC-input lamps, where real power is the measured input power of the LED lamp and apparent power is equal to the product of measured input current and input voltage. As mentioned previously, a test procedure for power factor is not described directly in IES LM–79–08, but the instrumentation for measuring the values necessary for calculating power factor is specified.

DOE proposed to calculate power factor by dividing measured input power by the product of input current and input voltage. Following seasoning and stabilization, input power, input current, and input voltage to the LED lamp would be measured using the instrumentation specified in section 8.0 of IES LM–79–08. Input power, input current, and input voltage would be measured using the same test conditions and test setup as for lumen output, lamp efficacy, CCT, and CRI as proposed in the July 2015 SNOPR. 80 FR at 39655.

DOE received several comments from stakeholders regarding DOE's proposed measurement and calculation of power factor. CA IOUs supported DOE's addition of a power factor test method, noting that higher power factor requirements in a standards rulemaking should increase energy savings. (CA IOUs, No. 44 at pp. 1–2) However, NEMA asserted that DOE should not set requirements for power factor, and consequently DOE should not have test methods for power factor in the LED lamps test procedure. (NEMA, No. 42 at p. 6)

DOE included power factor in this test procedure to potentially support the general service lamps rulemaking. If that rulemaking does not establish requirements for power factor, DOE notes that ENERGY STAR has requirements for power factor in its current and draft specifications for Lamps. Thus, DOE will continue to provide a test method for power factor in this final rule.

Although NEMA disagreed with the inclusion of the metric, NEMA agreed with DOE's proposed method for determining power factor. (NEMA, No. 42 at p. 6) CA IOUs recommended, however, that DOE incorporate by reference ANSI C82.77, which is referenced by the ENERGY STAR Lamps Specification V2.0 and by the California Energy Commission Title 24 Part 6 (Building Energy Efficiency Standards).[12] CA IOUs noted that this standard includes more detailed specifications of test equipment capabilities and guidance related to error tolerances. (CA IOUs, No. 44 at pp. 1–2)

---

[10] "ENERGY STAR Program Requirements: Product Specification for Lamps (Light Bulbs) Version 2.0." U.S. Environmental Protection Agency, February 2016.

[11] "ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.1." U.S. Environmental Protection Agency, August 28, 2014.

[12] California Energy Commission, "Building Energy Efficiency Standards for Residential and Nonresidential Buildings," June 2015. *http://*

DOE reviewed the equipment specifications and error tolerances in IES LM–79–08 and ANSI C82.77 and determined that IES LM–79–08 provides more stringent specifications related to error tolerances than ANSI C82.77. IES LM–79–08, which specifically applies to LED lamps, provides explicit equipment specifications and error tolerances for measuring each component of the power factor calculation (*i.e.,* input power, input current, and input voltage). ANSI C82.77 specifies tolerances for input voltage and current characteristics. However, it does not detail any tolerances or uncertainties for the input power supply or power measuring device. IES LM–79–08 specifies that the calibration uncertainty of the AC power meter must be less than or equal to 0.5 percent. Further, the tolerance specified for the voltage supplied to the tested product is more stringent in IES LM–79–08. ANSI C82.77 specifies that the input voltage must be within ±2 percent of the rated value, while IES LM–79–08 specifies that the input voltage applied to the LED lamp must be within ±0.2 percent of the rated lamp input voltage. Because IES LM–79–08 contains specifications that comprehensively address LED lamps and are more stringent for determining power factor, DOE maintained its approach in this final rule for measuring power factor.

D. Adopted Approach for Lifetime Measurements

In the July 2015 SNOPR, DOE proposed a new test procedure for measuring and projecting the time to failure of LED lamps that addressed many of the stakeholder concerns received regarding the June 2014 and lifetime SNOPR proposals. The new proposal was largely based on the IES LM–84–14 and IES TM–28–14 industry standards, and provided a simple, straightforward, and flexible test procedure. 80 FR at 39651. IES LM–84–14 provides a method for lumen maintenance measurement of integrated LED lamps and specifies the operational and environmental conditions during testing such as operating cycle, ambient temperature, airflow, and orientation. Lumen maintenance is the measure of lumen output after an elapsed operating time, expressed as a percentage of the initial lumen output. IES TM–28–14 provides methods for projecting the lumen maintenance of integrated LED lamps depending on the available data and test duration. DOE determined that the lifetime projection method in IES TM–28–14 would lead to more accurate lifetime projections than the June 2014 and lifetime SNOPR proposals, ENERGY STAR Lamps Specification V1.1,[11] and ENERGY STAR Lamps Specification V2.0[10] (when it requires compliance) because IES TM–28–14 specifies a method that projects time to failure using multiple lumen maintenance measurements collected over a period of time, rather than a single measurement at the end of the test duration. 80 FR at 39646–39647. These requirements, and any modifications proposed by DOE, are further discussed in sections III.D.1 through III.D.4.

1. Test Conditions

In the July 2015 SNOPR, DOE proposed that the conditions for lamp operation between lumen output measurements be as specified in section 4.0 of IES LM–84–14, with some modifications. Lumen output of LED lamps can vary with changes in ambient temperature and air movement around the LED lamp. However, to reduce test burden, DOE proposed that the operating conditions (*e.g.,* ambient temperature) required while measurements are not being taken be less stringent than those required when taking photometric measurements. The test conditions outlined in IES LM–84–14, as modified, ensure reliable, repeatable, and consistent test results without significant test burden. 80 FR at 39650–36951. These conditions are discussed in further detail in the paragraphs that follow.

Specifically, DOE discussed referencing section 4.1 of IES LM–84–14, which specifies that LED lamps should be handled according to the manufacturer's instructions and should be checked and cleaned prior to lumen output measurement and maintenance testing. Section 4.1 of IES LM–84–14 further states that unusual environmental conditions, such as thermal interference from heating, ventilation and air conditioning systems or solar loading, are to be reduced to levels reasonably expected to minimize influence.

DOE also proposed to adopt the instructions in section 4.2 of IES LM–84–14, which state that the lamp should be mounted in accordance with manufacturer specifications. DOE expanded on this, proposing that if lamps can operate in multiple orientations, an equal number of LED lamps should be positioned in the base-up and base-down orientations throughout testing, but that if the manufacturer restricts the position, the units should be tested in the manufacturer-specified position.

In addition, DOE proposed to include section 4.4 of IES LM–84–14, which specifies that photometric measurements should be taken at an ambient temperature of 25 °C ± 5 °C. A tolerance of 5 °C for the ambient temperature during lumen maintenance testing is practical, limits the impact of ambient temperature, and is not burdensome. Section 4.4 of IES LM–84–14 also indicates that the temperature variation of the operating environment must be monitored with a sufficient number of appropriately located temperature measurement points, and that the sensors used for measurements must be shielded from direct optical radiation from the lamp or any other source to reduce the impact of radiated heat on the ambient temperature measurement. Section 4.4 of IES LM–84–14 further states that if the ambient temperature falls outside the allowed range, the lumen maintenance test must be terminated. This setup for measuring and controlling ambient temperature would result in appropriate testing conditions as the lamp would be tested at room temperature and in an environment that is used most commonly for testing lamp technologies. *Id.*

DOE discussed requiring that vibration and air movement around the LED lamp be as specified in sections 4.3 and 4.6 of IES LM–84–14, which require that the LED lamps not be subjected to excessive vibration or shock during operation or handling, and that the air flow surrounding the LED lamp be minimized. This is a requirement in relevant industry standards for the test setup of other lamp types such as GSFLs, and would ensure consistent LED lamp measurements. DOE also proposed that humidity of the environment around the LED lamp shall be maintained to less than 65 percent relative humidity during the lumen maintenance test as specified in section 4.5 of IES LM–84–14. *Id.*

DOE did not receive any comments on the proposed test conditions when determining lifetime and therefore adopts them as described in this final rule.

2. Test Setup

a. Power Supply

DOE proposed that line voltage waveshape and input voltage of AC power supplies be as specified in sections 5.2 and 5.4 of IES LM–84–14, respectively. Section 5.2 specifies that

---

www.energy.ca.gov/2015publications/CEC-400-2015-037/CEC-400-2015-037-CMF.pdf.

an AC power supply must have a sinusoidal voltage waveshape at the input frequency required by the LED lamp such that the RMS summation of the harmonic components does not exceed 3.0 percent of the fundamental frequency while operating the LED lamp. Section 5.4 requires, in part, that the voltage of an AC power supply (RMS voltage) applied to the LED lamp be less than or equal to 2.0 percent of the rated RMS voltage. Lastly, DOE proposed to not reference section 5.3 of IES LM–84–14, which provides line impedance guidelines, because the procedures are listed as optional by IES and lack specific line impedance restrictions. 80 FR at 39651–52.

DOE did not receive any comments on the proposed power supply requirements and therefore adopts them as described in this final rule.

b. Test Rack Wiring

DOE proposed that test rack wiring requirements during lumen maintenance testing of LED lamps be as specified in section 5.5 of IES LM–84–14. This section specifies that wiring of test racks should be in accordance with national, state or provincial, and local electrical codes, and in accordance with any manufacturer operation and condition recommendations for the LED lamp. This section also requires that an inspection of electric contacts including the lamp socket contacts be performed each time the LED lamps are installed in the test rack. 80 FR at 39652.

DOE did not receive any comments on the proposed test rack wiring requirements and therefore adopts them as described in this final rule.

c. Electrical Settings

DOE proposed requiring lumen maintenance testing of LED lamps at the rated voltage as specified in section 5.1 of IES LM–84–14. For lamps with multiple operating voltages, DOE proposed that the integrated LED lamp be operated at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages including 120 volts, DOE proposed that the lamp be operated at 120 volts. For cases where an integrated LED lamp with multiple rated voltages is not rated for 120 volts, DOE proposed that the lamp be operated at the highest rated input voltage. For LED lamps with multiple modes of operation, DOE proposed incorporating section 7.0 of IES LM–79–08, which specifies that dimmable LED lamps should be tested at maximum input power. For cases where multiple modes (such as multiple CCTs and CRIs) occur at the maximum input power, DOE proposed that the manufacturer can select any of these modes for testing. For certification, DOE proposed that all measurements (lumen output, input power, efficacy, CCT, CRI, power factor, lifetime, and standby mode power) be conducted at the same mode of operation. *Id.*

DOE did not receive any comments on the proposed electrical settings during lumen maintenance testing and therefore adopts them as described in this final rule.

d. Operating Orientation

DOE proposed to incorporate the instructions in section 4.7 of IES LM–84–14, which specifies that the operating orientation of the lamp be the same as during photometric measurement. Lamp operating orientation during photometric measurement is discussed in section III.C.2.c. *Id.*

DOE did not receive any comments on the proposed operating orientation requirements and therefore adopts them as described in this final rule.

3. Test Method

DOE proposed that the lumen maintenance test procedure for LED lamps be as specified in section 7.0 of IES LM–84–14 and section 4.2 of IES TM–28–14. The test methods outlined in IES LM–84–14 and IES TM–28–14 ensure reliable, repeatable, and consistent test results without significant test burden. 80 FR at 39652. The lumen maintenance test method is discussed in further detail in sections III.D.3.a through III.D.3.g.

a. Initial Lumen Output Measurements

DOE proposed requiring an initial lumen output measurement consistent with section 7.6 of IES LM–84–14, which states that an initial lumen output measurement is required prior to starting the maintenance test. Initial lumen output is the measured amount of light that an LED lamp provides at the beginning of its life after it is initially energized and stabilized using the stabilization procedures described in section III.C.3.a. The methodology, test conditions, and setup requirements described in section III.C.3.c would be used when measuring initial lumen output for the lifetime test procedure. Manufacturers testing an LED lamp for lifetime would be required to use the same value of initial lumen output as used in the lamp efficacy calculation. *Id.*

DOE did not receive any comments on the proposed initial lumen output measurement requirements for time to failure testing and therefore adopts them as described in this final rule.

b. Interval Lumen Output Measurements

DOE also proposed requiring that additional lumen output measurements (known as interval lumen output measurements) be made after the initial lumen output measurement and continue at regular intervals, consistent with the requirements of section 7.6 of IES LM–84–14. Interval lumen output is measured after the lamp is energized and stabilized using the stabilization procedures in section III.C.3.a. 80 FR 39652. The methodology, test conditions, and setup requirements described in section III.C.3.c would be required when measuring interval lumen output for the lifetime test procedure. *Id.*

DOE did not receive any comments on the stabilization, methodology, test conditions, or setup for measuring interval lumen output and therefore adopts them as described in this final rule. The frequency of interval lumen output measurements is discussed in section III.D.4.a.

c. Test Duration

In the July 2015 SNOPR, DOE proposed that initial lumen output is the measured amount of light that a lamp provides at the beginning of its life, after it is initially energized and stabilized using the stabilization procedures. 80 FR at 39649. During lumen maintenance testing, the LED lamps must operate for an extended period of time, referred to as the "elapsed operating time." The entirety of elapsed operating time starting immediately after the initial lumen output measurement and ending with the recording of the final interval lumen output measurement is then referred to as the "test duration" or time "t." The test duration does not include any time when the lamp is not energized. If lamps are turned off (possibly for transport to another testing area or during a power outage), DOE proposed that the time spent in the off state not be included in the test duration. DOE did not specify minimum test duration requirements so manufacturers can customize the test duration based on the expected lifetime of the LED lamp. However, DOE acknowledged that the test duration has a significant impact on the reliability of the lumen maintenance prediction and thus proposed maximum time to failure claims that increase as the test duration increases. 80 FR at 39649–39650. These lumen maintenance calculation requirements are discussed further in section III.D.4.

DOE did not receive any comments on the proposed test duration criteria and therefore adopts them as described in this final rule.

d. Lamp Handling and Tracking

DOE proposed that LED lamps be handled, transported, and stored as specified in Section 7.2 of IES–LM–84–14, which states that care should be taken to prevent any damage or contamination that may affect the test results. These handling requirements are practical, prevent lamp damage that could affect the measured results, and would not be burdensome to manufacturers.

DOE also proposed that the requirements for LED lamp marking and tracking during lumen maintenance testing be as specified in section 7.3 of IES–LM–84–14. Section 7.3 of IES–LM–84–14 specifies that each LED lamp must be tracked during the maintenance test and identified by marking applied directly to the LED lamps or by labels that can be attached during transport, operation, and evaluation, or to the test rack position occupied by the LED lamp. It further provides that the chosen identification method should also consider the effect of exposure to light and heat, as this may alter or compromise the marking or label. Section 7.3 of IES–LM–84–14 also offers several possible marking methods and materials, including durable bar coding, ceramic ink marking, high-temperature markers, or any other method that endures or can be periodically renewed for the duration of the test. These requirements ensure that the LED lamp can be tracked and identified correctly throughout lumen maintenance testing. 80 FR at 39652–39653.

DOE did not receive any comments on the proposed lamp handling and tracking requirements and therefore adopts them as described in this final rule.

e. Operating Cycle

Lifetime test procedures for other lamp types sometimes require "cycling," which means turning the lamp on and off at specific intervals over the test period. However, industry has stated that unlike other lighting technologies, the lifetime of LED lamps is minimally affected by power cycling.[13] Thus, in the July 2015 SNOPR, DOE proposed that cycling of the LED lamp not be required during lumen maintenance testing by referencing section 7.4 of IES LM–84–14, which states the LED lamps should be operated continuously. 80 FR at 39653.

DOE did not receive any comments on the proposal to maintain continuous operation. However, in order to require continuous operation rather than recommend it, DOE removes the reference to section 7.4 of IES LM–84–14 and adopts language in its place that states to operate the integrated LED lamp continuously. This requirement aligns with previous industry comments and eliminates any confusion regarding operating cycle. 80 FR 39644, 39653 (July 9, 2015).

f. Time Recording

Accurate recording of the elapsed operating time is critical for the lumen maintenance test procedure. Therefore, DOE proposed to adopt section 7.5 of IES LM–84–14, which states that elapsed time recording devices must be connected to the particular test positions and accumulate time only when the LED lamps are operating. The LED lamp is operating only when the lamp is energized. If lamps are turned off (possibly for transport to another testing area or during a power outage), DOE proposed that the time spent in the off state not be included in the recorded elapsed operating time. Section 7.5 of IES LM–84–14 also indicates that video monitoring, current monitoring, or other means can be used to determine elapsed operating time. All equipment used for measuring elapsed operating time would be calibrated and have a total minimum temporal resolution of ± 0.5 percent. These requirements are achievable with minimal testing burden and provide reasonable stringency that is achievable via commercially available time recording instrumentation. *Id.*

DOE did not receive any comments on the proposed time recording requirements and therefore adopts them as described in this final rule.

g. Lamp Failure

DOE also proposed that LED lamps be checked regularly for failure as specified in section 7.8 of IES LM–84–14, which requires that checking for LED lamp operation either by visual observation or automatic monitoring be done at a minimum at the start of lumen maintenance testing and during every interval measurement. Section 7.8 of IES LM–84–14 further specifies that each non-operational LED lamp must be investigated to make certain that it is actually a failure, and that it is not caused by improper functioning of the test equipment or electrical connections. DOE proposed that if lumen maintenance of the LED lamp is measured at or below 0.7 or an LED lamp fails resulting in complete loss of light output, time to failure has been reached and therefore it must not be projected using the procedures described in the following section III.D.4. Instead, the time to failure is equal to the last elapsed time measurement for which the recorded lumen output measurement is greater than or equal to 70 percent of initial lumen output. *Id.*

Regarding DOE's proposal in section 4.6.2 of appendix BB to subpart B of part 430, NEMA recommended changing the text to read "For lumen maintenance values less than 0.7, including lamp failures that result in complete loss of light output, time to failure is equal to the midpoint of the last monitoring interval where the lumen maintenance is greater than or equal to 70 percent." (NEMA, No. 42 at p. 5)

DOE notes that if a lamp fails earlier than expected, manufacturers may not know exactly when the LED lamp reached 70 percent lumen maintenance. NEMA's proposal to calculate that time as the midpoint of the last monitoring interval where the lumen maintenance is greater than or equal to 70 percent may overestimate the time to failure. DOE's approach ensures that the actual time to failure is equal to or greater than the value used in calculations. Therefore, DOE maintains its proposal in the July 2015 SNOPR, which ensures that the time to failure represents a lumen maintenance value of 70 percent or greater.

h. Stress Testing

In the July 2015 SNOPR, DOE noted that industry has stated that, unlike other lighting technologies, the lifetime of LED lamps is minimally affected by power cycling.[13] Further, DOE research of existing literature and industry test procedures indicated that none are available that use rapid-cycle stress testing to predict the failure of the complete LED lamp. Therefore, in the July 2015 SNOPR, DOE proposed to retain the testing conditions that LED lamps operate without rapid-cycle stress testing. DOE also did not propose to modify the testing conditions to accommodate a stress testing method based on elevated temperatures. 80 FR 39650.

DOE received comments from EEAs and CA IOUs on its proposed testing conditions for LED lamps, stating that it should reconsider adopting an accelerated life test method for LED lamps. The organizations noted that accelerated life testing is commonly used in other electronic industries to identify product flaws under stressed operating conditions (*e.g.,* high temperature and high humidity). (EEAs, No. 43 at p. 2; CA IOUs, No. 44 at p. 6) EEAs commented that because integrated LED lamps are primarily constructed of electronic components, their lifetime is often affected by extreme ambient conditions. (EEAs, No. 43 at p. 2) CA IOUs agreed, adding that LED lamps utilize electronic drivers to regulate current, which may vary in performance under different ambient conditions. (CA IOUs, No. 44 at p. 6)

---

[13] NEMA Comments on ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0, Draft 2 *http://energystar.gov/products/specs/sites/products/files/NEMA.pdf.*

CA IOUs and EEAs referenced prior studies on stress testing in the LED industry. CA IOUs noted that 85/85 testing has been utilized in the industry, which is when the LED lamp is subjected to an ambient environment of 85°C and 85% relative humidity during testing. (CA IOUs, No. 44 at p. 6) CA IOUs and EEAs cited a study published by DOE that used a 75/75 testing method for analyzing LED luminaire lifetime under stressed conditions.[14] The study concluded that lumen depreciation alone is not a proxy for predicting LED lifetime and recommended the use of stress testing to identify product flaws and manufacturing defects. CA IOUs and EEAs also referenced the most recent draft of the ENERGY STAR Lamps Specification V2.0,[10] detailing EPA's plan to include elevated temperature testing for lamps intended to operate in recessed or enclosed fixtures. In order to identify and prevent manufacturing defects and poor quality products, CA IOUs and EEAs requested that DOE develop an accelerated life test method to align with EPA's ENERGY STAR program or one based on the LED luminaire research study. (EEAs, No. 43 at pp. 2–3; CA IOUs, No. 44 at p. 6) CA IOUs noted that the current lifetime test method as proposed by DOE does not address operating conditions for lamps that are installed in recessed or enclosed fixtures and recommended that DOE address this in its test procedure. (CA IOUs, No. 44 at p. 6)

DOE notes that it is important to maintain high quality products on the market. However, DOE is not adopting a stress test or elevated temperature test in this test procedure. DOE's research of existing literature and industry test procedures indicate that none are available that predict the failure of the complete LED lamp. The study published by DOE analyzing LED luminaire lifetime under stressed conditions [14] is not applicable to this test procedure for several reasons. While the study provided valuable insights on LED luminaires, it did not determine specific wear-out mechanisms, quantify failure modes, or determine acceleration factors to provide lifetime estimates for LED lamps. Further, the study specifically notes that its goal was to provide insight into failure modes of luminaires and was not intended to be a universal accelerated life test for luminaires. Therefore, DOE cannot use this study to develop an accelerated lifetime test method for the LED lamps test procedure at this time. Lastly, DOE notes that the adopted approach for lifetime measurements adequately tests all LED lamps, including lamps intended to operate in enclosed or recessed fixtures. DOE included lifetime in this test procedure to support the FTC Lighting Facts Label, and a consistent test method across all lamp types enables consumers to directly compare lamp lifetimes. Thus, DOE is not adopting a stress test or an elevated temperature test in this test procedure.

4. Projection Method

In the July 2015 SNOPR, DOE proposed a new lumen maintenance projection procedure that addressed many of the stakeholder concerns regarding the June 2014 and lifetime SNOPR proposals. The proposal was largely based on the IES TM–28–14 industry standard and provided a simple, straightforward, and flexible calculation based on the recorded trend in lumen maintenance of an LED lamp. However, DOE proposed certain modifications so that the projection method meets DOE's need for a test procedure that ensures consistent, repeatable results. 80 FR at 39653.

EEAs and CA IOUs supported DOE's inclusion of IES LM–84–14 and IES TM–28–14, citing the importance of measuring and projecting lumen maintenance for LED lamps rather than just LED sources. (EEAs, No. 43 at p. 2; CA IOUs, No. 44 at p. 4) CA IOUs added that DOE's proposal will encourage longer test durations, which will identify early product failures during testing. CA IOUs also noted that the proposal will help manufacturers make more accurate lifetime claims. (CA IOUs, No. 44 at p. 4)

However, Philips and NEMA disagreed with DOE's proposal to reference IES LM–84–14 and IES TM–28–14 for lumen maintenance testing and lifetime projections. They commented that industry is still widely using IES LM–80–08 and IES TM–21–11 and indicated that the current proposal would cause significant certification and testing delays, result in manufacturer test burden, and ultimately stifle innovation in a rapidly evolving product cycle. (Philips, No. 41 at p. 3; NEMA, No. 42 at p. 3) NEMA also noted that IES LM–80–08 and IES TM–21–11 allow for test results of one LED source to be used for each product that uses that LED, which shortens test time for the entire product line. NEMA asserted that because IES LM–84–14 is a new standard and manufacturer experience with it is low, it is unknown if IES LM–84–14 will more accurately predict lumen maintenance than IES LM–80–08. Lastly, NEMA recommended DOE give manufacturers the option to certify lamps under IES LM–80–08 and IES TM–21–11 or IES LM–84–14 and IES TM–28–14, which would give the lighting industry sufficient time to be familiarized with the new standards. (NEMA, No. 42 at pp. 3–4)

DOE notes, as it has in several previous SNOPRs, that measuring and projecting the performance of the entire lamp rather than the LED source is more accurate for a test procedure concerning lamp metrics. Other LED lamp components may cause lamp failure before the LED source falls below 70 percent of its initial light output, and therefore, it is undesirable for the lifetime of LED lamps to be approximated by the lumen maintenance of only the LED source. While NEMA notes that IES LM–80–08 and IES TM–21–11 allow for test results of one LED source to be used for each product that uses that LED source, that approach may not accurately characterize the lifetime of those products. For example, other electrical components included in the assembled lamp may also affect the lifetime but this effect would not be captured when testing only the LED source. Although NEMA claims that industry is still widely using the LED source to approximate lifetime, ENERGY STAR requires testing of the whole lamp to determine lifetime and the majority of integrated LED lamps are already certified to ENERGY STAR.[15] Finally, DOE must adopt a test procedure that provides reliable, repeatable, and consistent results. As such, DOE cannot allow two different methods (*i.e.,* LM–80–08/TM–21–11 and LM–84–14/TM–28–14) to be used because they will generate different results for the same lamp.

---

[14] U.S. Department of Energy, "Hammer Testing Findings for Solid-State Lighting Luminaires," December 2013. *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/hammer-testing_Dec2013.pdf.*

[15] ENERGY STAR estimated the market penetration of ENERGY STAR certified integrated LED lamps to be 75 percent in the 2014 ENERGY STAR Unit Shipment and Market Penetration Report, found at *http://www.energystar.gov/ia/partners/downloads/unit_shipment_data/2014_USD_Summary_Report.pdf?8691-0d73.*

a. Interval Lumen Output Measurement Collection Instructions

In the July 2015 SNOPR, DOE proposed that all interval lumen output measurements meet the requirements specified in section 4.2, 4.2.1, and 4.2.2 of IES TM–28–14. For test durations greater than or equal to 6,000 hours, DOE proposed that section 4.2.1 of IES TM–28–14 be followed. Section 4.2.1 of IES TM–28–14 specifies that lumen maintenance data used for direct extrapolation must be collected initially and at least once every 1,000 hours thereafter. For test durations greater than or equal to 3,000 hours and less than 6,000 hours, DOE proposed section 4.2.2 of IES TM–28–14 be followed, except that lumen maintenance data of LED packages and modules would not be collected. Section 4.2.2 of IES TM–28–14 specifies that lumen maintenance data must be collected initially after 1,000 hours, and at least once every 500 hours thereafter.

Lumen maintenance data collected at intervals greater than those specified in the previous paragraph must not be used as this may compromise the accuracy of the projection results. In addition, section 4.2 of IES TM–28–14 indicates that lumen maintenance data must be collected within a ± 48 hour window of each measurement point, *e.g.,* for 1000-hour intervals, between 952 hours and 1048 hours, between 1952 and 2048 hours, etc. This ± 48 hour data collection window is also applicable to other intervals smaller than 1,000 hours. Furthermore, section 4.2 specifies that lumen maintenance data used for the projection calculation must be equally dispersed in time (to within ± 48 hours), and that no two consecutive data collection intervals after the initial 1,000 hours shall differ by more than 96 hours in length. Therefore, data may be used in the projection calculation if they are collected every 1,000 hours (± 48 hours), every 500 hours (± 48 hours), etc., but not every 1,000 hours and occasionally at 500 hours, as this will give excessive statistical weight to certain data points. *Id.*

CA IOUs and EEAs agreed with DOE's proposal, stating that regular data collection intervals, such as 1,000 hours, allow for the identification of early lamp failures. (CA IOUs, No. 44 at p. 4; EEAs, No. 43 at p. 2) However, NEMA disagreed with DOE's proposal for lumen maintenance collection at 1,000 hour intervals. NEMA stated that 1,000 hour test intervals are not common in practice because industry is using IES LM–80–08 and ENERGY STAR has test collection points at the 3,000 and 6,000 hour intervals. Further, NEMA commented that any change would invalidate current ENERGY STAR certification data and result in retesting of many products. (NEMA, No. 42 at p. 5) Philips agreed with NEMA's comments, adding that FTC also does not typically collect lumen maintenance data at 1,000 hour intervals and that if the test procedure is not modified, manufacturer burden will be significant due to retesting and recertification costs. (Philips, No. 41 at p. 3)

DOE disagrees with NEMA's point that industry is not familiar with gathering data at 1,000 hour intervals. Industry standards IES LM–80–08 and TM–21–11, recommended by NEMA, require and encourage lumen maintenance collection intervals of 1,000 hours or less. Thus, LED source manufacturers should already be conducting tests using 1,000 hour intervals at a minimum. DOE also notes that lamp manufacturers certify many of their lamps with the ENERGY STAR program, which, as NEMA states, requires more than one measurement of lumen maintenance. While DOE requires additional measurements of lumen maintenance, DOE notes that interval measurements, in general, improve the overall quality of the lifetime projection. DOE is aware that additional measurements may increase the burden on manufacturers and accounted for the testing of lamps in the test burden calculations discussed in section IV.B. Finally, the ENERGY STAR program references DOE's test procedures where they exist and has stated its intention to adopt DOE's test procedure for LED lamps once it is finalized.[16] Thus, data can be shared between the two programs. For these reasons, DOE maintained its approach to collect lumen output measurements at the described intervals.

b. Projection Calculation

Section 5.0 of IES TM–28–14 provides guidance for how to determine time to failure for an integrated LED lamp. For short test durations (less than 3,000 hours), IES TM–28–14 does not provide a projection method so time to failure is determined using actual test data. For test durations of 3,000 hours or greater, IES TM–28–14 provides two different methods for projecting time to failure, depending on test duration. The first is a direct extrapolation method for projecting time to failure based on lumen maintenance data of a whole LED lamp. The second is a combined extrapolation method based on both whole LED lamp and LED source lumen maintenance data. DOE discusses these provisions of IES TM–28–14 in more detail in this section.

IES TM–28–14 does not provide a lumen maintenance projection method if IES LM–84–14 testing has been completed for a total elapsed operating time of less than 3,000 hours. IES TM–28–14 indicates that the prediction may be unreliable since the spread of prediction estimates increases significantly for data sets that do not meet the minimum test duration requirements for the either the direct or combined extrapolation methods. On the basis of the limited dataset potentially yielding unreliable projections, DOE proposed in the July 2015 SNOPR no projection of time to failure for test durations less than 3,000 hours. Instead, time to failure would equal the test duration. 80 FR at 39653.

For test durations of at least 6,000 hours, the IES TM–28–14 procedures recommend use of a direct extrapolation method. The direct extrapolation method uses an exponential least squares curve-fit to extrapolate lumen maintenance measurements of the complete integrated LED lamp to the time point where lumen maintenance decreases to 70 percent of its initial lumen output. 80 FR at 39653–54.

The direct extrapolation method described in section 5.1 of IES TM–28–14 for projecting time to failure based on lumen maintenance data of a whole LED lamp is similar to DOE's June 2014 SNOPR proposal. 79 FR 32035. However, where DOE's June 2014 SNOPR projected time to failure based on the underlying exponential decay function in ENERGY STAR's Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0,[17] IES TM–28–14 projects time to failure based on the data obtained for each individual LED lamp. Thus, in the July 2015 SNOPR, DOE proposed to incorporate the direct extrapolation method provided in section 5.1 of IES TM–28–14, as this should result in more accurate projections. 80 FR at 39654.

Although DOE proposed referencing the direct extrapolation method specified in section 5.1 of IES TM–28–14 for projecting time to failure of LED lamp lumen maintenance data (tested as described in sections III.D.1 through III.D.3), the July 2015 SNOPR also proposed the following modification for consistency with DOE's reporting requirements: Measured lumen maintenance data of all the LED lamp samples must not be averaged, and the averaging procedures specified in section 5.1.2 of IES TM–28–14 must not be used. Instead, DOE proposed that the projection calculation be completed for each individual LED lamp and the projected time to failure values be used to calculate the lifetime of the sample using proposed alternative procedures, which are discussed in section III.F.3. *Id.*

---

[16] See page 3 of Draft 3 of the ENERGY STAR Program Requirements: Product Specification for Lamps (Light Bulbs) Version 2.0, *http://www.energystar.gov/sites/default/files/ENERGY%20STAR%20Lamps%20V2.0%20Draft%203%20Specification.pdf.*

[17] "ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0." U.S. Environmental Protection Agency, August 28, 2013.

If at least 3,000 hours but less than 6,000 hours of whole-lamp lumen maintenance data is available, IES TM–28–14 recommends a combined extrapolation method. This method uses IES TM–21–11 to project the data collected from IES LM–80–08, which measures lumen maintenance of the LED source component. This method then corrects for additional lumen maintenance losses in the complete integrated LED lamp, if they are observed during whole-lamp testing.

DOE proposed not to reference the combined extrapolation method described in section 5.2 of IES TM–28–14 for tests where at least 3,000 hours, but less than 6,000 hours, of whole-lamp lumen maintenance test data are available. The requirement to use lumen maintenance data of the LED source component would require disassembly of the lamp, which could necessitate irreversible modifications to the lamp and introduce potential for error and variation in the measurements. *Id.* Furthermore, failure of an integrated LED lamp is often determined by components other than the LED source, as many stakeholders described in comments to the NOPR test procedure. 79 FR 32030.

In place of the combined extrapolation method for test durations of at least 3,000 hours but less than 6,000 hours, DOE proposed to use the direct extrapolation method specified in section 5.1 of IES TM–28–14 but to lower the maximum allowed time to failure claim. Section 5.1.5 of IES TM–28–14 provides instruction for how to limit time to failure claims depending on sample size. Because DOE requires a sample size of a least ten LED lamps, the projected time to failure, as specified in Table 1 in section 5.1.5 of IES TM–28–14, would be limited to no more than six times the test duration for test durations greater than or equal to 6,000 hours. However, to account for the increased uncertainty in lowering the threshold for the direct extrapolation method to 3,000 hours, DOE proposed to reduce the maximum time to failure claims based on the test duration. For this test duration range, DOE proposed a maximum projection limit that scales linearly from one times the test duration (the effective limit for test durations less than 3,000 hours) to approximately six times the test duration (the limit for test durations greater than or equal to 6,000 hours). 80 FR at 39654.

In summary, DOE proposed to determine time to failure using the following procedures:

(1) If the test duration is less than 3,000 hours:

No projection of lumen maintenance data is permitted, and time to failure equals the test duration or the recorded time at which the lamp reaches 70 percent lumen maintenance, whichever is of lesser value. See section III.D.3.g for more details on how lamp failure is recorded during lumen maintenance testing.

(2) If the test duration is greater than or equal to 3,000 and less than 6,000 hours:

The direct extrapolation method specified in sections 5.1.3 and 5.1.4 of IES TM–28–14 must be utilized. The maximum time to failure claim is determined by multiplying the test duration by the limiting multiplier calculated in the following equation:

$$Limiting\ multiplier = \frac{1}{600} * test\ duration - 4$$

Where *test duration* is expressed in hours.

This equation is a linear function that equals one when the test duration is equal to 3,000 hours and six at 6,000 hours. As an example, if an LED lamp is tested for 4,500 hours, the maximum time to failure that could be reported based on this approach is 15,750 hours (3.5 times the test duration of 4,500 hours). The limiting multiplier increases as the test duration increases until the test duration equals 6,000 hours where it is set at a value of six.

(3) If the test duration is greater than or equal to 6,000 hours:

The direct extrapolation method specified in sections 5.1.3 and 5.1.4 of IES TM–28–14 must be utilized. The projected time to failure is limited to no more than six times the test duration.

DOE received several comments regarding the proposed lifetime projection methods for the LED lamps test procedure. EEAs supported DOE's proposal of not allowing lamps with test durations less than 3,000 hours to project time to failure. (EEAs, No. 43 at p. 2) CA IOUs agreed, adding that the formulas provided by DOE to identify the maximum allowable lifetime claim are appropriate, and they would not recommend the maximum allowable lifetime claim to be increased based only on test duration. (CA IOUs, No. 44 at p. 4–5)

Regarding lamps with test durations greater than or equal to 3,000 and less than 6,000 hours, DOE is removing the reference to section 5.1.3 of IES TM–28–14 to describe the data used for the direct extrapolation method. DOE notes that most of that section refers to test durations of 6,000 hours or greater and is therefore not relevant. However, DOE is maintaining the instruction to disregard data collected prior to 1,000 hours of operating time as this requirement would be applicable to lamps with test durations greater than or equal to 3,000 and less than 6,000 hours.

NEMA commented that IES TM–28–14 should not be used to project lifetime for the entire lamp, as the standard is intended to project lumen maintenance and not electronic failures that may occur in the lamp. (NEMA, No. 42 at p. 6) CA IOUs similarly noted that DOE's proposal has the potential to derive misleading results in lifetime claims, as it currently does not account for the durability of the electronics that drive the LED source. CA IOUs cited a study that claimed LED electronics are more likely to fail before the LED sources.[18] (CA IOUs, No. 44 at p. 3)

DOE is aware that electronic components in lamps may fail before the LEDs themselves. As described in section III.D.4, this is why DOE is adopting a test procedure that measures performance of the whole lamp rather than just the LED component. While there may be a general belief in the industry that electrical components will fail before the LED component, there remains no method in existing literature or industry standards to predict the failure of the electronic components of the LED lamp. DOE will continue to monitor industry publications and may update the test procedure to include such a method if it is introduced in the future. In this final rule, DOE is adopting the lumen maintenance projection methods described earlier to determine time to failure.

---

[18] Sarah D. Shepherd, *et al.*, "New understandings of failure modes in SSL luminaires," September 2014. *http://spie.org/Publications/Proceedings/Paper/10.1117/12.2062243.*

E. Adopted Approach for Standby Mode Power

As explained in the July 2015 SNOPR, EPCA section 325(gg)(2)(A) directs DOE to establish test procedures to include standby mode, "taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. . . ." (42 U.S.C. 6295(gg)(2)(A)) IEC Standard 62087 applies only to audio, video, and related equipment, but not to lighting equipment. As IEC Standard 62087 does not apply to this rulemaking, in the July 2015 SNOPR, DOE proposed procedures consistent with those outlined in IEC Standard 62301, which applies generally to household electrical appliances. 80 FR at 39654–39655. However, to develop a test method that would be familiar to LED lamp manufacturers and maintain consistent requirements to the active mode test procedure, DOE referenced language and methodologies presented in IES LM–79–08 for test conditions and test setup requirements.

DOE received several comments questioning whether the test procedure is intended to address smart or connected lamps (*i.e.,* lamps that are controlled via wireless network communication). EEAs and CA IOUs requested that the test procedure specifically address smart or connected LED lamps in its test procedure for measuring standby power. The organizations noted that these particular LED lamps are increasing in popularity and suggested that it is imperative for DOE to incorporate them into the test procedure. (EEAs, No. 43 at p. 3; CA IOUs, No. 44 at p. 2) CA IOUs also suggested DOE solicit feedback from industry stakeholders regarding the test procedure's applicability to connected LED lamps. They requested, though, that if the test procedure is not addressing these lamps, then DOE should specifically exclude them from the scope of coverage. (CA IOUs, No. 44 at p. 3)

To further support including connected lamps in this test procedure, CA IOUs noted that in some scenarios these lamp types may consume more annual energy in standby mode than in active mode, therefore standby mode power must be adequately measured and accounted for to prevent consumers from being misled by the yearly energy cost label on purchased products. CA IOUs also commented that as currently written, the DOE test procedure may not be addressing connected lamps in its reference of IEC 62301. CA IOUs asked DOE to reference IEC 62301 in its entirety and specifically discuss its relation to testing smart or connected LED lamps. They noted that section 5 of IEC 62301, which DOE incorporated by reference, does not specifically mention connected products. CA IOUs also indicated that section 5 may not specifically cover instructions for connecting a lamp to a wireless network or for measuring the faster "cyclic" power conditions, as described by IEC 62301,[19] of these product types. They commented that the cyclic nature of these lamps is likely as fast as several times per second. (CA IOUs, No. 44 at pp. 2–3)

DOE agrees with CA IOUs and EEAs that the LED lamps test procedure needs to address the standby mode power of smart or connected LED lamps. The lamps described by CA IOUs and EEAs meet DOE's definition of an integrated LED lamp, and, therefore, they are included in the scope of this test procedure. Further, DOE's definition of standby mode includes the mode by which connected lamps operate, and the test procedures found in section 5 of IEC 62301 can be applied to these lamps. The DOE test procedure outlines the necessary steps to use the IEC test method for these lamp types.

Regarding the cyclic nature of these lamps, DOE clarifies that, although IEC 62301 states a regular sequence of power states may occur over minutes or hours, IEC 62301 contains procedures to collect power fluctuations within those power states. DOE agrees that power fluctuations of connected lamps are of concern, and IEC 62301 specifies to collect data at equal intervals of 0.25 seconds or faster for power loads that are unsteady or where there are any regular or irregular power fluctuations. Therefore, IEC 62301 is appropriate for testing connected lamps.

In the July 2015 SNOPR, DOE noted that a standby mode power measurement is an input power measurement made while the LED lamp is connected to the main power source, but is not generating light (an active mode feature). DOE proposed in the July 2015 SNOPR that all test condition and test setup requirements used for active mode measurements (*e.g.,* input power) (see sections III.C.1 and III.C.2) also would apply to standby mode power measurements. However, because DOE proposed to measure the power consumed, not the light output (light output is zero in standby mode by definition), the stabilization procedures are required for input power only and not lumen output. After the lamp has stabilized, the technician would send a signal to the LED lamp instructing it to provide zero light output. The technician would then measure standby power in accordance with section 5 of IEC 62301. 80 FR at 39655. In the July 2015 SNOPR, DOE also proposed to clarify that standby mode measurements may be taken before or after active mode measurements of lumen output, input power, CCT, CRI, power factor, and lamp efficacy, but must be taken before the active mode measurement of and calculation of time to failure. *Id.*

NEMA commented that it agreed with DOE's proposal to determine stabilization for standby mode measurements using power measurements only. (NEMA, No. 42 at p. 6)

Since the publication of the July 2015 SNOPR, DOE has discovered that the stabilization criteria in IES LM–79–08 may result in a scenario where lamps operating in standby mode are unable to be stabilized, due to the variable nature of standby mode power in LED lamps. Therefore, DOE has modified its approach for stabilizing lamps to use the stabilization criteria specified in section 5 of IEC 62301 instead of IES LM–79–08. The criteria detailed in IEC 62301 were designed to specifically address power patterns that occur in a standby state. IEC 62301 specifies to take the average power of several comparison periods (rather than picking individual power measurements as in IES LM–79–08), and to determine that stabilization has occurred after the power difference between the two comparison periods divided by the time difference of the midpoints of the comparison periods has a slope less than 10 mW/h (for products with input powers less than or equal to 1 W) or 1 percent of the measured input power per hour (for products where the input power is greater than 1 W). Using the average power of the comparison periods when determining stabilization accounts for power fluctuations during standby mode. Thus, DOE is requiring in this final rule that LED lamps be stabilized per section 5 of IEC 62301 prior to standby mode power measurements.

CA IOUs requested that DOE define network mode and suggested that if a product is designed to be connected to a wireless network in order to fully operate, then the test procedure should specify that the lamp is to be connected to the network before standby mode testing begins. Connected lamps may require the use of an external control system or hub to serve as a communication point between the lamp and end user, and CA IOUs asked DOE to specify a maximum permissible distance the control system can be from the lamp during testing. (CA IOUs, No. 44 at p. 3)

---

[19] IEC 62301 describes cyclic as "a regular sequence of power states that occur over several minutes or hours."

DOE agrees that the test procedure needs additional detail to specify that the lamp must remain connected to the communication network through the entirety of the standby mode test. If the lamp becomes disconnected, the lamp may exit standby mode or otherwise have its power consumption impacted, which would yield inaccurate test results. Therefore, DOE is adding detail to section 5 of appendix BB to subpart B of part 430 to specify that the integrated LED lamp must be connected to the communication network prior to testing and must remain connected throughout the entire duration of the test. DOE did not specify a maximum distance the lamp can be from the control system or hub during testing. DOE's requirement for the lamp to remain connected throughout the entire duration of the test ensures that if a lamp is moved to a distance such that it disconnects from the communication network, the test results are invalid.

CA IOUs also commented that connected lamps may experience cycles or power fluctuations when lamps are communicating with the wireless network, so the test procedure should specifically provide instructions to account for this in an average power metric over a minimum five minute test duration. (CA IOUs, No. 44 at p. 3) DOE notes that section 5 of IEC 62301 gives manufacturers the flexibility to choose the measurement method that best applies to the nature of their products' power supply. Further, each of the methods available for use in IEC 62301 specify that the product must have test durations of at least ten minutes, which is an adequate test duration to ensure wattage fluctuations have been recorded.

Lastly, CA IOUs provided several general recommendations for DOE to enhance the standby portion of the test procedure. They recommended DOE review EU Regulation 801/2013,[20] which has made advancements in standby power measurements for household electronic equipment. Additionally, CA IOUs advised DOE to conduct testing on connected lamps to further develop the test procedure based on the results from testing and CA IOUs' suggestions. (CA IOUs, No. 44 at p. 3)

DOE appreciates the feedback from CA IOUs on the standby mode test procedure. DOE notes it is required by statute, as previously mentioned, to consider IEC 62301 or IEC 62087 to establish test procedures for standby mode power consumption. Thus, if DOE were to include provisions from EU Regulation 801/2013, it would be supplementary material that DOE has determined is necessary for accurately measuring the standby power consumption of LED lamps. DOE reviewed EU Regulation 801/2013 and found several similarities between it and IEC 62301. For example, EU Regulation 801/2013 indicates tests are to be conducted at ambient temperatures, directs the test unit to be put into a standby state for testing, and requires the lamp to remain connected to the network throughout testing. DOE's test procedure, which references IEC 62301, also includes these directions. Although EU Regulation 801/2013 addresses how to test products with multiple network connections, DOE has not identified any integrated LED lamps at this time with multiple network ports. In its review, DOE did not find any instruction in EU Regulation 801/2013 that would more accurately measure standby mode power and, therefore, DOE is not adding specific methodology from EU Regulation 801/2013 to this test procedure. DOE notes that it conducted testing on connected lamps[21] and modified this test procedure as appropriate using results from testing (*e.g.*, the modified stabilization criteria), suggestions from stakeholders, and additional research into commercially available LED lamps that can operate in standby mode.

F. Basic Model, Minimum Sample Size, and Determination of Represented Values

1. Basic Model

In the June 2014 SNOPR, DOE proposed to revise the term "basic model" in 10 CFR 430.2 for LED lamps; however upon further review, DOE determined in the July 2015 SNOPR that a revised definition of basic model specific to integrated LED lamps is not necessary for the general service lamp energy conservation rulemaking (see public docket EERE–2013–BT–STD–0051). LED lamps with different CCT, CRI, or lifetime could be categorized as the same basic model if they have the same efficacy. DOE noted that all products included in a basic model must comply with the certified values, and products in the same basic model must also have the same light output and electrical characteristics (including lumens per watt) when represented in manufacturer literature. 80 FR at 39655.

2. Minimum Sample Size

In the July 2015 SNOPR, DOE maintained its proposal to require a sample size of at least ten LED lamps. DOE proposed that a minimum of ten LED lamps must be tested to determine the input power, lumen output, efficacy, power factor, CCT, CRI, lifetime, and standby mode power. 80 FR at 39655–56. DOE also proposed that the general requirements of 429.11(a) are applicable except that the sample must be comprised of production units. 80 FR at 39664. Regarding inclusion of all 10 lamps in the reported results, DOE maintained in the July 2015 SNOPR that LED lamp failure should not be exempt from reporting because this would potentially mislead consumers, particularly with respect to lamp lifetime. 80 FR at 39656.

3. Determination of Represented Values

In the July 2015 SNOPR, DOE proposed calculations to determine represented values for CCT, lumen output, efficacy, power factor, and CRI using a lower confidence limit (LCL) equation, and input power and standby mode power using an upper confidence limit (UCL) equation. 80 FR at 39656–57. LED lamp test data provided by ENERGY STAR as well as Pacific Gas and Electric Company (hereafter referred to as PG&E), the Collaborative Labeling and Appliance Standards Program (hereafter referred to as CLASP), and California Lighting Technology Center (hereafter referred to as CLTC) were used to derive the confidence level and sample maximum divisor for each metric. Because certification testing is permitted to take place at one test laboratory, the sample set is unlikely to include inter-lab variability. Therefore, as stated in the July 2015 SNOPR, DOE does not include an inter-lab variability parameter in its calculation of the divisor when establishing rating requirements that are based on certification testing for which the manufacturer chooses the lab to conduct such testing. 80 FR at 39657. Descriptions of each of the LCL and UCL calculations are provided as follows.

---

[20] European Union, "Commission Regulation No 801/2013," August 2013. *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:225:0001:0012:en:PDF.*

[21] DOE conducted testing on connected LED lamps for the GSL energy conservation standards NOPR to determine standby power consumption for these lamp types. Test results are discussed in detail in the GSL NOPR TSD, which can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051.*

DOE proposed in the July 2015 SNOPR that the CCT of the units be averaged and that average be rounded as specified in the July 2015 SNOPR. 80 FR at 39656. The average CCT would be calculated using the following equation:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where,
$\bar{x}$ is the sample mean;
n is the number of units; and
x_i is the i^{th} unit.

DOE proposed in the July 2015 SNOPR that the represented values of lumen output or efficacy be equal to or less than the lower of the average lumen output or efficacy of the sample set and the 99 percent LCL of the true mean divided by 0.96. Additionally, DOE proposed that the represented value of CRI or power factor be equal to or less than the lower of the average CRI or power factor of the sample set and the 99 percent LCL of the true mean divided by 0.98. 80 FR at 39656–57. DOE proposed the following equation to calculate LCL for lumen output, efficacy, CRI, and power factor:

$$LCL = \bar{x} - t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

Where,
$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of samples; and
$t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n–1 degrees of freedom.

DOE also proposed in the July 2015 SNOPR that the represented value of input power and standby mode power be equal to or greater than the greater of the average lumen output of the sample set and the 99 percent UCL of the true mean divided by 1.02. *Id.* DOE proposed the following equation to calculate UCL:

$$UCL = \bar{x} + t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

Where,
$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of samples; and
$t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n–1 degrees of freedom.

Regarding DOE's proposed LCL/D and UCL/D statistical methodology to determine represented values, NEMA asked DOE to instead consider using just the sample mean for statistical estimation. NEMA asserted that DOE's current approach is not an unbiased methodology, because the choice of divisor, D, is fixed through an assumed standard deviation of the sample population. Therefore, NEMA noted that if the actual standard deviation varies from that assumed in calculating the fixed divisor, then bias or inaccuracies in the statistical representation may occur. (NEMA, No. 42 at pp. 6–7)

DOE notes that the statistical divisors are based on multiple data sources and are based on the average expected standard deviation in a sample set of lamps. If a manufacturer finds its sample set of lamps has higher standard deviation than DOE's average estimate, the LCL/D is likely to be the lower value. If the standard deviation is less than DOE's estimate, then the mean is expected to be the lower value. This system does not bias the represented value, rather the represented value is in part a function of the variability in the sample of lamps. Samples of lamps with higher than expected variability are expected to report a value equal to or lesser than the LCL/D to limit the degree to which consumers experience less than advertised performance in any given lamp unit. DOE further notes that NEMA's suggestion, using only the sample mean, will not account for the variability that was observed within each data set. Thus, the proposed represented value requirements present the "best" value that manufacturers may report, and DOE maintains the statistical approach that was proposed in the July 2015 SNOPR.

Similarly, DOE received comment on the data provided by ENERGY STAR, PG&E, CLASP, and CLTC that DOE used to derive the confidence level and sample mean divisor for lumen output, input power, efficacy, CRI, and power factor. NEMA disagreed with the use of these data as the sample sets used do not account for inter-lab variation. NEMA noted that this may create an unbalanced testing and verification system where labs that generate more favorable results for manufacturers will be used more often than their counterparts. NEMA asked DOE to consider inter-lab variation in the standards rulemaking or incorporate it into the LED lamps test procedure. (NEMA, No. 42 at p. 7) DOE notes that manufacturers must use the test procedures adopted in this rulemaking to both certify compliance with applicable energy conservation standards and make representations for integrated LED lamps. A manufacturer may choose any lab that meets the accreditation requirements adopted in 10 CFR 430.25 to test its products. Regardless of the lab chosen, the manufacturer must follow the relevant sampling requirements and calculations in 10 CFR 429 to determine the represented values, which use statistical methods to account for test procedure and production variability based upon a multi-unit sample. In addition, if DOE has reason to believe that a basic model does not comply with the applicable energy conservation standard, then DOE may initiate an enforcement investigation to determine whether a particular basic model complies. As to NEMA's concern regarding inter-lab variation, DOE notes that its enforcement provisions address inter-lab variability because they use a confidence limit that is broader than the one used for certification testing and also require a multi-unit sample to determine compliance. Therefore, DOE is not revising its test procedure at this time because the existing enforcement provisions already account for inter-lab variation with regards to determining compliance and address NEMA's concern.

NEMA also disagreed with DOE's proposal for power factor variability in the July 2015 SNOPR, citing that the input power in the numerator and the product of input current and input voltage in the denominator are highly correlated. As an alternative, NEMA noted that it is in the process of revising LSD–63 to include a direct measurement of power factor at four independent labs. Lastly, NEMA recommended for DOE to gather power factor measurements from a random production sample, measure the lamps at several different labs to correctly estimate inter-lab variation, specify the reporting of the sample mean in the LED lamps test procedure, and add a tolerance for inter-lab variation in the standards rulemaking. (NEMA, No. 42 at p. 7)

DOE disagrees with NEMA's assertion that power factor variability was incorrectly accounted for in the July 2015 SNOPR. DOE used a power factor divisor of 0.98 (same divisor as input power) because power factor is a ratio of power measurements and is expected to have comparable variability to input power. Therefore, DOE maintained the proposal in the July 2015 SNOPR. DOE also notes that it will review LSD–63 as it becomes available and that DOE has addressed inter-lab variation as described above.

Additionally in the July 2015 SNOPR, DOE proposed that the definition of lifetime should be revised to better align with the EPCA definition of lifetime in 42 U.S.C. 6291(30)(P). 80 FR 39656. Therefore, DOE added that the lifetime of an integrated LED lamp is calculated by determining the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units when the numbers are sorted in value order).

DOE received comments from EEAs and CA IOUs regarding the proposed method for determining LED lamp lifetime. EEAs and CA IOUs disagreed with DOE's proposal, which calculates lifetime as the median time to failure of a sample of 10 lamps. EEAs cited early failure concerns with LED lamps as a deterrent for having the lifetime test method based only on lumen maintenance and median time to failure. EEAs pointed to the CFL early failure study (as discussed in section III.D.4.b) as a possible reason for concern with LED lamps. (EEAs, No. 43 at pp. 1–2) EEAs and CA IOUs requested that DOE reinterpret its definition of lifetime, which is currently based on the statutory definition of lifetime in 42 U.S.C. 6291(30)(P). EEAs and CA IOUs noted that DOE's current proposal (*i.e.*, median time to failure) can create a situation in which manufacturers can project a typical lifetime for an LED lamp based on a sample that actually had four early failures. They cautioned DOE that manufacturers may be able to take advantage of this potential loophole in the test procedure and avoid having to account for early failures. EEAs and CA IOUs recommended DOE interpret the statute so that it can define failure of 50 percent of the sample units as the mean time to failure of the entire sample set, instead of the mean of the middle two units. (EEAs, No. 43 at p. 2; CA IOUs, No. 44 at pp. 4–5) Alternatively, CA IOUs suggested using a calculation to project out the rate at which 50 percent of the sample would be expected to fail for a sample set that had multiple products fail before the end of the test duration. (CA IOUs, No. 44 at p. 5)

DOE understands the concern from EEAs and CA IOUs regarding the effect of lamps with early failures on overall lifetime projections. However, the definition of lamp lifetime is set by statute in 42 U.S.C. 6291(30)(P). DOE notes that the current definition is also consistent with other lighting products. Further, DOE expects that if there is an issue with consistent early failures for a particular lamp model, then the whole sample would generally be impacted. If a product line often has early failures, it would be very unlikely for manufacturers to be able to manipulate the sample by selecting only a few lamps that do not fail early and represent an inflated lifetime. Additionally, it is impossible to determine if a lamp will fail early by visibly inspecting the lamp unless there is obvious physical damage. Such lamps would not qualify to be tested so manufacturers cannot employ this strategy in their test samples.

In the July 2015 SNOPR, DOE also proposed that the represented value of life (in years) of an integrated LED lamp be calculated by dividing the lifetime by the estimated annual operating hours as specified in 16 CFR 305.15(b)(3)(iii). Further, DOE proposed that the represented value of estimated annual energy cost (expressed in dollars per year) must be the product of the input power in kilowatts, an electricity cost rate as specified in 16 CFR 305.15(b)(1)(ii) and an estimated average annual use as specified in 16 CFR 305.15(b)(1)(ii). 80 FR 39664–39665.

DOE received comments from NEMA asking DOE to incorporate a three percent tolerance in measured lumen output values, which would align with the ENERGY STAR Lamps Specification V2.0. NEMA reasoned that this would improve consistency between the two programs and reduce burden on manufacturers. (NEMA, No. 42 at p. 8) DOE notes that it does not incorporate tolerances into test procedures and variability is accounted for in the sampling plan discussed previously. Therefore, DOE did not adopt a three percent tolerance in measured lumen output values in this test procedure.

G. Rounding Requirements

In the July 2015 SNOPR, DOE proposed individual unit and sample rounding requirements for lumen output, input power, efficacy, CCT, CRI, lifetime, time to failure, standby mode power, and power factor. In this final rule, DOE removed all individual unit rounding requirements for these metrics and maintained rounding requirements for only the represented values.

DOE proposed that the active mode and standby mode input power of integrated LED lamps be rounded to the nearest tenths of a watt. DOE also proposed that the efficacy of LED lamps be rounded to the nearest tenth of a lumen per watt as this is consistent with rounding for other lighting technologies and is achievable with today's equipment. 80 FR at 39665. Based on a review of commercially available LED lamps as well as testing equipment measurement capabilities, DOE proposed that the lumen output of LED lamps be rounded to three significant figures as this is an achievable level of accuracy for LED lamps. DOE further proposed that lifetime of LED lamps be rounded to the nearest whole hour. Rounding to the nearest whole hour is consistent with the unit of time used for lifetime metrics for other lamp technologies, and is a level of accuracy a laboratory is capable of measuring with a standard time-keeping device. 80 FR at 39657.

DOE only received comments on the proposals for CCT and power factor and therefore adopts the rounding requirements for the other metrics in this final rule. The following sections describe the specific comments on the proposals for rounding CCT and power factor in the July 2015 SNOPR.

1. Correlated Color Temperature

In the July 2015 SNOPR, DOE proposed to round CCT values for individual units to the tens place and round the certified CCT values for the sample to the hundreds place. DOE is not following a nominal CCT methodology and therefore proposed rounding to the nearest tens digit for measurements of individual lamp units, and proposed rounding certified CCT values for the complete sample to the hundreds place. 80 FR at 39657.

NEMA commented that the text in CFR 430.23(dd)(4) should be modified to round CCT to the nearest 100 Kelvin. (NEMA, No. 42 at p. 8) DOE notes that in this final rule it is removing the rounding requirements for individual units and requiring the represented value of CCT to be rounded to the nearest 100 Kelvin.

The Republic of Korea raised a concern to DOE regarding the measurement uncertainty of LED lamps with high CCTs. They cited a study from the International Energy Agency[22] and noted that lamps with CCTs above 6,500 K have measurement uncertainty over ±100 K. The Republic of Korea commented that the proposed rounding requirements may lead to a certified CCT range of approximately ±50 K from the individual lamp units. Due to the possibility of high CCT measurement uncertainty, the Republic of Korea requested DOE to provide a range of CCT values that are considered for tolerance and measurement uncertainty. (Republic of Korea, No. 45 at p. 2)

As mentioned previously, DOE does not incorporate measurement tolerances into test methods. Tolerances are accounted for in the sampling provisions and requirements for representations. Further, this test procedure has been developed to ensure reliable results across varying color temperatures. The same test method must be used for lamps of all possible

---

[22] International Energy Agency, "Solid State Lighting Annex 2013 Interlaboratory Comparison Final Report," September 2014. *http://ssl.iea-4e.org/files/otherfiles/0000/0067/IC2013_Final_Report_final_10.09.2014a.pdf.*

CCT values in order for manufacturers to make consistent representations of CCT on product labels and marketing materials. When measuring CCT, the represented value of the sample is equal to the mean of the sample. DOE notes that in this final rule, DOE has removed rounding requirements for individual units and maintained rounding requirements for only represented values. As DOE is requiring the represented value to be rounded to the nearest 100 K, this should account for the potential range of values cited by the Republic of Korea.

2. Power Factor

In the July 2015 SNOPR, DOE proposed that power factor be rounded to the nearest hundredths place, consistent with common usage in industry literature. 80 FR at 39657.

NEMA noted a discrepancy in two sections of the test procedure language in the July 2015 SNOPR, indicating DOE proposed to round power factor for individual test units to the nearest tenths place in 10 CFR 430.23(dd)(7) and to the nearest hundredths place in 10 CFR 429.56(c)(6). NEMA recommended rounding power factor to the nearest tenths place. (NEMA, No. 42 at pp. 7–8)

The proposal to round an individual unit value to a lower degree of specificity than what was required for the larger sample was an unintended error. However, DOE notes that it has removed the requirement to round individual test units in this final rule, thus no longer requiring individual test units to be rounded to the nearest tenths place. DOE is maintaining the proposal from the July 2015 SNOPR to round power factor for the sample to the nearest hundredths place to be consistent with common usage in industry literature and other lighting test procedures. DOE notes that these rounding requirements are consistent with the CFL test procedure rulemaking. 80 FR 45723, (July 31, 2015).

H. Interaction With ENERGY STAR

In the June 2014 SNOPR, to reduce test burden, DOE proposed allowing measurements collected for the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 to be used for calculating represented values of lumen output, input power, lamp efficacy, CCT, CRI, and lifetime. In the July 2015 SNOPR, DOE proposed a new test procedure for lifetime that was largely based on the IES LM–84–14 and IES TM–28–14 industry standards and provided a simple, straightforward, and flexible test procedure to account for potential future changes in the lifetime of LED products. DOE noted that the proposal in the July 2015 SNOPR projected time to failure based on data obtained for each individual LED lamp rather than assuming the same relationship between test duration and lumen maintenance applies to every LED lamp. Because DOE revised its approach for lifetime measurement and projection, there was no longer significant similarity between the DOE and ENERGY STAR lifetime test procedures. DOE noted it will work with ENERGY STAR to revise the test procedures for lifetime accordingly. 80 FR at 39657–58.

DOE received comments from NEMA regarding differences between the LED lamps test procedure and the ENERGY STAR Lamps Specification V2.0. NEMA requested that DOE analyze the increased burden of the LED lamps test procedure with respect to potential deviations from existing practices (*e.g.*, ENERGY STAR). NEMA noted that a test procedure with significant differences from existing methods will affect existing products, in addition to new products, and many products on the market would have to be retested. Therefore, NEMA asked DOE to minimize changes between the ENERGY STAR Lamps Specification V2.0 and DOE's LED lamps test procedure. (NEMA, No. 42 at p. 2) NEMA also cautioned that because the ENERGY STAR program accommodates DOE test procedures in its specifications, any additional revisions to the LED lamps test procedure will delay the finalization of the ENERGY STAR Lamps Specification V2.0. (NEMA, No. 42 at pp. 5–6)

As mentioned in section III.D.4.a, ENERGY STAR has stated that it will reference DOE's test procedure upon completion.[16] DOE further notes that measurements collected for the ENERGY STAR Lamps Specification V1.1 and ENERGY STAR Lamps Specification V2.0 (when it requires compliance) can be used for calculating represented values of energy efficiency or consumption metrics covered by the DOE test procedure as long as those measurements were collected in accordance with the DOE test procedure. Manufacturers must make representations in accordance with the DOE test procedure and represented value determination method beginning 180 days after publication of the final rule in the **Federal Register**.

I. Laboratory Accreditation

Regarding the National Voluntary Laboratory Accreditation Program (NVLAP) accreditation, in the July 2015 SNOPR DOE proposed to require lumen output, input power, lamp efficacy, power factor, CCT, CRI, lifetime, and standby mode power (if applicable) testing be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by the International Laboratory Accreditation Cooperation (ILAC). NVLAP is a member of ILAC, so test data collected by any laboratory accredited by an accrediting body recognized by ILAC would be acceptable. DOE also proposed to state directly that accreditation by an Accreditation Body that is a signatory member to the ILAC Mutual Recognition Arrangement (MRA) is an acceptable means of laboratory accreditation. 80 FR at 39658.

DOE received comments on a possible issue with test laboratories achieving accreditation to the DOE test procedure. NEMA recommended that DOE adopt industry standards and test procedures without modification, citing that this would reduce burden and prevent issues with laboratory accreditation to the LED TP. NEMA also commented that labs accredited to an industry standard by NVLAP must conduct testing using that particular standard rather than a test procedure styled after an industry standard. (NEMA, No. 42 at p. 4) DOE notes that laboratories and other testing bodies can obtain accreditation directly to a DOE test procedure through NVLAP (*e.g.*, the fluorescent lamp ballast test procedure), thus DOE maintains the lab accreditation requirements from the July 2015 SNOPR.

J. Certification

In the July 2015 SNOPR, DOE proposed certification requirements for LED lamps. Manufacturers will not have to certify values to DOE unless standards are promulgated for LED lamps as part of the rulemaking for general service lamps. However, DOE provided certification requirements and the ability to certify by CCMS to enable FTC to allow manufacturers to submit data through DOE's Compliance Certification Management System (CCMS) related to FTC labeling requirements. *Id.*

DOE recognized that testing of LED lamp lifetime can require considerably more time than testing of other LED lamp metrics. Therefore, DOE proposed to allow new basic models of LED lamps to be distributed prior to completion of the full testing for lifetime. Similar to treatment of GSFLs and incandescent reflector lamps in 10 CFR 429.12(e)(2), DOE proposed that prior to distribution of a new basic model of LED lamp, manufacturers must submit an initial certification report. If testing for time to failure is not complete, manufacturers may include estimated values for lifetime and life. If reporting estimated values, the certification report must describe the prediction method and the prediction method must be generally representative of the methods specified in appendix BB to subpart B of part 430. Manufacturers are also required to maintain records per 10 CFR 429.71 of the development of all estimated values and any associated initial test data. If reporting estimated values for lifetime and life, the certification report must indicate that the values are estimated until testing for time to failure is complete. 80 FR at 39665. If, prior to completion of testing, a manufacturer ceases to distribute in commerce a basic model, the manufacturer must submit a full certification report and provide all of the information listed in 10 CFR 429.12(b), including the product-specific information required by 10 CFR 429.56(b)(2), as part of its notification to DOE that the model has been discontinued. 80 FR at 39664. For any metrics covered by the LED lamps test procedure, manufacturers must make representations in accordance with the DOE test procedure and represented value determination method beginning 180 days after publication of the final rule in the **Federal Register**.

DOE received comments on the quality of LED lamps entering the market. EEAs illustrated this concern to DOE, noting the LED lamps test procedure should ensure that poor quality LED lamps cannot be sold to consumers. They presented a series of CFL verification tests, known as the Program for the Evaluation and Assessment of Residential Lighting (PEARL), which determined compliance rates of ENERGY STAR qualified CFLs. The program tested commercially-available CFLs from 2000–2009, ultimately concluding there were a significant amount of non-compliant CFLs that were ENERGY STAR qualified. EEAs paired this with a discussion of CFL early failure rates, emphasizing that there were high early failure rates in the PEARL results for products that should have long lifetimes. The full discussion of the PEARL analysis can be found in EEAs' public comment on *regulations.gov* under docket number EERE–2011–BT–TP–0071. Ultimately, EEAs urged DOE to learn from prior experiences, such as this issue with CFLs, to prevent similar issues from occurring with LED lamps. EEAs emphasized that LED lamps are rapidly developing products and continually demanded at lower prices, which may lead manufacturers to release poor quality products. (EEAs, No. 43 at pp. 4–6)

DOE understands EEAs' concern regarding the prevention of poor quality LED lamps entering the market. DOE's adoption of a reliable, repeatable test procedure helps to ensure that the performance characteristics of integrated LED lamps are accurately represented. DOE's general service lamp rulemaking addresses energy conservation standards for certain metrics (*i.e.,* lamp efficacy and power factor). Lastly, DOE has the Compliance Certification and Enforcement (CCE) program to ensure manufacturers are testing their products and making accurate representations.

K. Effective and Compliance Date

The effective date for this test procedure will be 30 days after publication of this test procedure final rule in the **Federal Register**. Pursuant to EPCA, manufacturers of covered products must use the applicable test procedure as the basis for determining that their products comply with the applicable energy conservation standards adopted and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) For those energy efficiency or consumption metrics covered by the DOE test procedure, manufacturers must make representations, including certification of compliance with an applicable standard, in accordance with the DOE test procedure beginning 180 days after publication of this final rule in the **Federal Register**.

Philips expressed concern in response to the July 2015 SNOPR that the 180 day period is not sufficient based on the current LED lamp lifetime projection methods in the test procedure. Philips noted that DOE is not taking into account the additional time required to expand existing test infrastructure, estimating this expansion would take at least four months to complete. Therefore, Philips suggested that DOE modify the certification period to one year. (Philips, No. 41 at p. 3) The Republic of Korea followed with a similar concern, claiming the test duration for some lamps will require a test period of ten months and also requested that DOE set its certification period to one year. (Republic of Korea, No. 45 at p. 2)

DOE did not modify the 180 day certification period in this final rule. If the in-house testing infrastructure expansion has not been completed in sufficient time, DOE has accounted for any third party testing costs that may be required for manufacturers that are unable to test their products themselves. Further, DOE notes that there is no minimum test duration for the time to failure test procedure. While DOE agrees that some tests would take at least ten months to project certain LED lamp lifetimes, DOE notes that manufacturers may submit certification reports with estimated values of lifetime until time to failure testing is complete. See section III.J for a more detailed description of the certification process.

L. Ceiling Fan Light Kits Using LED Lamps

DOE proposed to harmonize the test procedures for lamps, including LEDs, used in ceiling fan lights kits in a notice published on October 31, 2014. 79 FR 64688 (Docket EERE–2013–BT–TP–0050). The comments received as part of that docket were generally supportive of this approach and are discussed as part of that rulemaking docket. In the July 2015 SNOPR, DOE proposed to add the appropriate cross-references in the ceiling fan light kit test procedures at 429.33 and 430.23 to the integrated LED lamp test procedures. 80 FR at 39659; 39664–65. DOE received no comments on these cross references and therefore adopts them in this final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed the July 2015 SNOPR and today's final rule under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following sections.P≤The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335110, which applies to electric lamp manufacturing and includes LED lamps, is 1,250 or fewer employees.

For the July 2015 SNOPR, DOE examined the number of small businesses that will potentially be affected by the LED lamps test procedure. This evaluation revealed that the test procedure requirements proposed in the July 2015 SNOPR will apply to about 41 small business manufacturers of LED lamps. DOE compiled this list of manufacturers by reviewing the DOE LED Lighting Facts label list of partner manufacturers,[23] the SBA database, ENERGY STAR's list of qualified products,[24] performing a general search for LED manufacturers, and conferring with representatives of the DOE's solid state lighting program. DOE determined which companies manufacture LED lamps by reviewing company Web sites, the SBA Web site when applicable, calling companies directly, and/or reviewing the Hoovers Inc. company profile database. Through this process, DOE identified 41 small businesses that manufacture LED lamps.

NEMA commented that DOE should confirm the number of basic models used in its calculations of testing burden including test setup and testing costs. NEMA stated that DOE did not appear to account for the different lamps that need to be tested, such as lamps of varying CCT or beam angle. NEMA further reasoned that because the LED lamp market is rapidly evolving, manufacturers produce lamps that may not reach the market but are still subject to testing as part of the development process. NEMA noted that using a number of basic models that is too low risks underweighting actual burden. (NEMA, No. 42 at pp. 2, 4)

For this final rule, DOE reviewed its estimated number of small businesses. DOE updated its list of small businesses by reviewing the DOE LED Lighting Facts Database, ENERGY STAR's list of qualified products, individual company Web sites, SBA's database, and market research tools (*e.g.,* Hoover's reports[25]). DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a "small business," or are completely foreign owned and operated. DOE determined that seven companies were small businesses that maintain domestic production facilities for the integrated LED lamps covered by this rulemaking.

DOE understands NEMA's concerns regarding underestimating testing burden. In this final rule, DOE reports the cost of testing per basic model rather than using an average number of basic models because manufacturers may offer a greater or fewer number of basic models than the average value. DOE notes that while manufacturers may test a higher number of models than the number that are commercially available, these testing costs are not attributable to DOE's testing and certification requirements and instead are the costs associated with the typical product development cycle. DOE only accounts for testing costs that are a direct result of compliance with its test procedures and standards. Additionally, DOE notes that as discussed in section III.F, LED lamps with different CCT, CRI, lifetime, or other performance characteristics could be categorized as the same basic model provided all products included in the basic model comply with the certified values and have the same light output and electrical characteristics (including lumens per watt) when represented in manufacturer literature.

In the July 2015 SNOPR, DOE estimated that the labor costs associated with conducting the input power, lumen output, CCT, CRI, and standby mode power testing is $31.68 per hour. 80 FR 39659. Calculating efficacy and power factor of an LED lamp was determined not to result in any incremental testing burden beyond the cost of carrying out lumen output and input power testing. 80 FR 39659–39660. DOE also expected standby mode power testing to require a negligible incremental amount of time in addition to the time required for the other metrics. In total, DOE estimated that using the July 2015 SNOPR test method to determine light output, input power, CCT, CRI, and standby mode power would result in an estimated incremental labor burden of $29,140 for each manufacturer.

The July 2015 SNOPR also estimated that lifetime testing would contribute to overall cost burden. The initial setup including the cost to custom build test racks capable of holding 23 different LED lamp models, each tested in sample sets of ten lamps (a total of 230 LED lamps) would be $25,800. 80 FR 39660. The labor cost for lifetime testing was also determined to contribute to overall burden. For the revised lifetime test procedure proposed in the July 2015 SNOPR, a lumen output measurement is required to be recorded for multiple time intervals at a minimum of every 1,000 hours of elapsed operating time. This represented an increase in the number of required measurements in the lifetime test procedure compared to the previous proposal. DOE estimated that the combination of monitoring the lamps during the test duration, measuring lumen maintenance at multiple time intervals, and calculating lifetime at the end of the test duration would require approximately eight hours per lamp by an electrical engineering technician. DOE estimated that using this test method to determine lifetime would result in testing-related labor costs of $58,280 for each manufacturer. *Id.*

NEMA requested clarification on DOE's burden calculation. Specifically, NEMA stated that DOE's estimate of lifetime testing labor costs of $29,140 per manufacturer was debatable since the number of products varies significantly between manufacturers and is constantly changing due to the evolving nature of LED lamps. (NEMA, No. 42 at p. 8) DOE understands that the LED market is dynamic and products are continuing to evolve, however as stated previously, DOE only accounts for testing costs attributable to compliance with DOE test procedures and standards. Product development costs are not factored into this analysis. Further, DOE notes that in the July 2015 SNOPR, the estimated labor cost for lifetime testing per manufacturer was increased from $29,140 to $58,280 to reflect the additional testing intervals and increased test duration required.

Additionally, for this final rule, DOE updated its calculations to reflect an increase in labor rates and to report the cost per basic model. DOE also updated its calculations to include a cost for standby power testing. DOE estimates the time needed for standby power testing to be approximately one hour per lamp. DOE estimates that the labor costs associated with conducting the input power, lumen output, CCT, CRI, and standby mode power testing is $41.68 per hour. In total, DOE estimates that using the final rule test method to determine light output, input power, CCT, CRI, and standby mode power would result in an estimated incremental labor burden of $2,080 per basic model. DOE maintains that calculating efficacy and power factor of an LED lamp would not result in any incremental testing burden beyond the cost of carrying out lumen output and input power testing. Further, DOE notes that although the cost for standby mode power testing is included, only a small portion of LED lamps are capable of standby operation and this cost would not be recognized by all manufacturers.

---

[23] DOE LED Lighting Facts Partner List, *http://www.lightingfacts.com/Partners/Manufacturer.*

[24] ENERGY STAR Qualified Lamps Product List, *http://downloads.energystar.gov/bi/qplist/Lamps_Qualified_Product_List.xls?dee3-e997.*

[25] Hoovers | Company Information | Industry Information | Lists, *http://www.hoovers.com.*

For this final rule, DOE also updated the lifetime testing costs based on the revised labor rates and to report a cost per basic model. DOE determined the initial setup, including the cost to custom build test racks, would be $1,410 per basic model. DOE again estimated that the combination of monitoring the lamps during the test duration, measuring lumen maintenance at multiple time intervals, and calculating lifetime at the end of the test duration would require approximately eight hours per lamp by an electrical engineering technician. Based on the revised labor rate, DOE estimates that using this test method to determine lifetime would result in testing-related labor costs of $3,330 per basic model.

Because NVLAP[26] imposes a variety of fees during the accreditation process, including fixed administrative fees, variable assessment fees, and proficiency testing fees, DOE also provided cost estimates in the July 2015 SNOPR for light output, input power, CCT, CRI, lifetime, and standby mode power (if applicable) testing to be NVLAP-accredited or accredited by an organization recognized by NVLAP. Assuming testing instrumentation is already available, in the July 2015 SNOPR, DOE estimated the first year NVLAP accreditation cost would be $15,320, initial setup cost would be $25,800, and the labor costs to carry out testing would be approximately $87,420 for each manufacturer producing 23 basic models. *Id.* Therefore, in the first year, for manufacturers without testing racks or NVLAP accreditation who choose to test in-house, DOE estimated a maximum total cost burden of $128,540, or about $559 per LED lamp tested. DOE expected the setup cost to be a onetime cost to manufacturers. Further, the labor costs to perform testing would likely be smaller than $87,420 after the first year because only new products or redesigned products would need to be tested. Alternatively, if a manufacturer opts to send lamps to a third-party test facility, DOE estimated testing of lumen output, input power, CCT, CRI, lifetime, and standby mode power to cost $600 per lamp. In total, DOE estimated in the July 2015 SNOPR that the LED lamp test procedure would result in expected third-party testing costs of $138,000 for each manufacturer for 23 basic models. DOE noted this would not be an annual cost. *Id.*

NEMA expressed concern that DOE's calculations for test burden do not account for normal process issues involved with third party testing and noted the calculation appears to be based only on the time required to perform the testing. NEMA commented that if a manufacturer does not have the ability to test in-house and uses a third-party lab for testing, the costs increase three to four times. (NEMA, No. 42 at p. 8) DOE agrees that testing costs at third party labs are typically higher than in-house testing and therefore, as stated previously, DOE estimated both in-house testing costs and third-party testing costs to represent the range of testing costs experienced by manufacturers.

For this final rule, DOE updated the labor rate used to calculate in-house testing costs and also updated the third-party testing costs to reflect any changes since the July 2015 SNOPR was published. DOE also reviewed the fee structure published by NVLAP,[27] which includes annual fees, assessment fees, and proficiency tests. Assuming testing instrumentation is already available, DOE estimates the average NVLAP accreditation cost per year would be $370 per basic model and, as discussed previously in this section, initial setup cost would be $1,410 per basic model and the labor costs to carry out testing would be approximately $5,420 per basic model. Therefore, in the first year, for manufacturers without testing racks or NVLAP accreditation who choose to test in-house, DOE estimates a maximum total cost burden of about $7,190 per basic model tested. Further, after the first year, the testing cost would decrease to about $5,780 per basic model tested, because the setup cost would be a onetime cost to manufacturers. For this final rule, DOE estimates the third-party testing costs would be about $7,880 per basic model.

NEMA also noted that with the inclusion of IES LM–84–14, manufacturers will incur increased costs associated with a larger test setup required for testing whole LED lamps instead of LED chips. Additionally, NEMA asked DOE to include in its test burden calculations the added lab capacity required from adopting LM–84 because an LED lamp manufacturer may now have to equip and staff a lab when it previously relied on LED chip testing from the supplier. (NEMA, No. 42 at p. 4) DOE understands there are additional costs incurred by the manufacturers as a result of this rulemaking. As discussed previously, DOE factored in the costs of testing in-house including a new test setup for testing LED lamps, NVLAP accreditation, and labor costs. In addition, manufacturers also have the option to test at a third-party lab if they prefer which DOE provided estimated costs for in this final rule.

As described in the July 2015 SNOPR, DOE notes that the cost estimates described are much larger than the actual cost increase most manufacturers will experience. The majority of manufacturers are already testing for lumen output, input power, CCT, and CRI, as these metrics are well established and required within the industry standard IES LM–79–08. The IES LM–79–08 standard is also the recommended standard for testing LED lamps for the FTC Lighting Facts Label as well as the ENERGY STAR program. DOE notes that manufacturers test integrated LED lamps to provide performance characteristics for these lamps in catalogs. This testing is likely conducted according to the relevant industry standards because they represent best practice. DOE's test procedures for integrated LED lamps adopted in this final rule largely reference those industry standards. Therefore, testing integrated LED lamps according to DOE's test procedure should not be substantially different in setup and methodology.

Further, most manufacturers of integrated LED lamps already participate in the ENERGY STAR program, which includes requirements for lifetime, input power, lumen output, CCT, and CRI. 80 FR at 39660. DOE maintains that while its adopted test procedure differs from ENERGY STAR in some respects, DOE expects the incremental difference in testing costs under the two test procedures to be significantly less than full cost of testing under the adopted DOE test procedure. This is because most manufacturers already own the requisite test equipment (*e.g.,* test racks) and already have labor expenditures corresponding to carrying out testing for ENERGY STAR. DOE and ENERGY STAR testing costs would not be additive because ENERGY STAR references DOE test procedures where they exist and revises its specification to reference new DOE test procedures when they are finalized.[28] Based on these revisions, manufacturers would not need to complete separate testing for the ENERGY STAR and DOE programs.

---

[26] As discussed in section III.I, laboratories can be accredited by any accreditation body that is a signatory member to the ILAC MRA. DOE based its estimate of the costs associated with accreditation on the NVLAP accreditation body.

[27] NVLAP Fee Structure *http://www.nist.gov/nvlap/nvlap-fee-policy.cfm*—last accessed Feb. 10, 2016

In summary, DOE does not consider the test procedures adopted in this final rule to have a significant economic impact on small entities. The final cost per manufacturer primarily depends on the number of basic models the manufacturer offers. The quantified testing costs are not annual costs because DOE does not require manufacturers to retest a basic model annually. The test results used to generate a certified rating for a basic model remain valid as long as the basic model has not been modified from the tested design in a way that makes it less efficient or more consumptive, which would require a change to the certified rating. If a manufacturer has modified a basic model in a way that makes it more efficient or less consumptive, new testing is required only if the manufacturer wishes to make representations of the new, more efficient rating.

Based on the criteria outlined earlier and the reasons discussed above, DOE certifies that the test procedures adopted in this final rule would not have a significant economic impact on a substantial number of small entities, and the preparation of a final regulatory flexibility analysis is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 10 CFR part 429, subpart B. This collection-of-information requirement was approved by OMB under OMB Control Number 1910–1400.

DOE requested OMB approval of an extension of this information collection for three years, specifically including the collection of information in the present rulemaking, and estimated that the annual number of burden hours under this extension is 30 hours per company. In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017. 80 FR 5099 (January 30, 2015).

Notwithstanding any other provision of the law, no person is required to respond to, nor must any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE adopts a test procedure for LED lamps that will be used to support the upcoming general service lamps energy conservation standard rulemaking as well as FTC's Lighting Facts labeling program. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule adopts existing industry test procedures for LED lamps, so it will not affect the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

---

[28] ENERGY STAR published a second draft of its Lamps Specification V2.0 on April 10, 2015 and included the following note on page 2: "In an effort to provide partners with continuity and honor the Agency's intention to harmonize with applicable DOE Test Procedures, this Draft proposes to allow for use of the final test procedure for LED Lamps once it is published by DOE, where applicable."

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This finale rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988) that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to establish a test procedure for measuring the lumen output, input power, lamp efficacy, CCT, CRI, power factor, lifetime, and standby mode power of LED lamps is not a significant regulatory action under Executive Order 12866. Moreover, it will not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

This final rule incorporates test methods contained in the following commercial standards: ANSI/IES RP–16–2010, "Nomenclature and Definitions for Illuminating Engineering;" IES LM–84–14, "Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires;" and IES TM–28–14, "Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires." The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition and has received no comments objecting to their use.

M. Description of Standards Incorporated by Reference

In this final rule, DOE incorporates by reference the test standard published by IEC, titled "Household electrical appliances—Measurement of standby power," IEC 62301 (Edition 2.0, 2011–01). IEC 62301 is an industry accepted standard that specifies test methods for determination of standby power of household electrical appliances. The test procedure for standby power adopted in this final rule references IEC 62301. IEC 62301 can be purchased from ANSI and is readily available on ANSI's Web site at *http://webstore.ansi.org.*

DOE also incorporates by reference the test standard published by ANSI and

IES, titled "Nomenclature and Definitions for Illuminating Engineering," ANSI/IES RP–16–2010. ANSI/IES RP–16–2010 is an industry accepted standard that specifies definitions related to lighting and is applicable to products sold in North America. The definition of integrated LED lamp adopted in this final rule references ANSI/IES RP–16–2010. ANSI/IES RP–16–2010 is readily available on IES's Web site at *http://www.ies.org/.*

DOE also incorporates by reference the test standard published by IES, titled "Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products". IES LM–79–2008. IES LM–79–2008 is an industry accepted standard that specifies test methods for determination of lumen output, input power, lamp efficacy, power factor, CCT, and CRI and is applicable to LED lamp products sold in North America. The test procedure for lumen output, input power, lamp efficacy, power factor, CCT, and CRI adopted in this final rule references IES LM–79–08. IES LM–79–08 is readily available on IES's Web site at *http://www.ies.org/.*

DOE also incorporates by reference the test standard published by IES, titled "Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires," IES LM–84–2014. IES LM–84 is an industry accepted standard that specifies test methods for determination of lumen maintenance and is applicable to LED lamp products sold in North America. The test procedure for lifetime adopted in this final rule references IES LM–84. IES LM–84 is readily available on IES's Web site at *http://www.ies.org/.*

DOE also incorporates by reference the test standard published by IES, titled "Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires," IES TM–28–2014. IES TM–28 is an industry accepted standard that specifies test methods for projection of lumen maintenance and is applicable to LED lamp products sold in North America. The test procedure for lifetime adopted in this final rule references IES TM–28. IES TM–28 is readily available on IES's Web site at *http://www.ies.org/.*

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on June 9, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is amending parts 429 and 430 of chapter II, subchapter D, of title 10, of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12(f) is revised to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(f) *Discontinued model filing.* When production of a basic model has ceased and it is no longer being sold or offered for sale by the manufacturer or private labeler, the manufacturer must report this discontinued status to DOE as part of the next annual certification report following such cessation. For each basic model, the report must include the information specified in paragraphs (b)(1) through (b)(7) of this section, except that for integrated light-emitting diode lamps, the manufacturer must submit a full certification report, including all of the information required by paragraph (b) of this section and the product-specific information required by § 429.56(b)(2).

* * * * *

■ 3. Section 429.33 is amended by adding paragraphs (a)(2)(ii), (a)(3)(i)(D), and (a)(3)(i)(F) to read as follows:

§ 429.33 Ceiling fan light kits.

(a) * * *

(2) * * *

(ii) For ceiling fan light kits with medium screw base sockets that are packaged with integrated light-emitting diode lamps, determine the represented values of each basic model of lamp packaged with the ceiling fan light kit in accordance with § 429.56.

* * * * *

(3) * * *

(i) * * *

(D) For integrated LED lamps, § 429.56.

* * * * *

(F) For other SSL lamps (not integrated LED lamps), § 429.56.

* * * * *

■ 4. Section 429.56 is added to read as follows:

§ 429.56 Integrated light-emitting diode lamps.

(a) *Determination of Represented Value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of integrated light-emitting diode lamps by testing, in conjunction with the sampling provisions in this section.

(1) *Units to be tested.*

(i) The general requirements of § 429.11 (a) are applicable except that the sample must be comprised of production units; and

(ii) For each basic model of integrated light-emitting diode lamp, the minimum number of units tested must be no less than 10 and the same sample comprised of the same units must be used for testing all metrics. If more than 10 units are tested as part of the sample, the total number of units must be a multiple of two. For each basic model, a sample of sufficient size must be randomly selected and tested to ensure that:

(A) Represented values of initial lumen output, lamp efficacy, color rendering index (CRI), power factor, or other measure of energy consumption of a basic model for which consumers would favor higher values are less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the measured value for the i^{th} unit; Or,

(*2*) The lower 99 percent confidence limit (LCL) of the true mean divided by

0.96; or the lower 99 percent confidence limit (LCL) of the true mean divided by 0.98 for CRI and power factor, where:

$$LCL = \bar{x} - t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

and, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A to this subpart).

(B) Represented values of input power, standby mode power or other measure of energy consumption of a basic model for which consumers would favor lower values are greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the measured value for the i^{th} unit;

Or,

(*2*) The upper 99 percent confidence limit (UCL) of the true mean divided by 1.02, where:

$$UCL = \bar{x} + t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

and, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A to this subpart);

(C) Represented values of correlated color temperature (CCT) of a basic model must be equal to the mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units in the sample; and x_i is the measured CCT for the i^{th} unit.

(D) The represented value of lifetime of an integrated light-emitting diode lamp must be equal to or less than the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units when the numbers are sorted in value order) rounded to the nearest hour.

(2) The represented value of life (in years) of an integrated light-emitting diode lamp must be calculated by dividing the lifetime of an integrated light-emitting diode lamp by the estimated annual operating hours as specified in 16 CFR 305.15(b)(3)(iii).

(3) The represented value of estimated annual energy cost for an integrated light-emitting diode lamp, expressed in dollars per year, must be the product of the input power in kilowatts, an electricity cost rate as specified in 16 CFR 305.15(b)(1)(ii), and an estimated average annual use as specified in 16 CFR 305.15(b)(1)(ii).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to integrated light-emitting diode lamps;

(2) Values reported in certification reports are represented values. Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information: The testing laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, the date of manufacture, initial lumen output in lumens (lm), input power in watts (W), lamp efficacy in lumens per watt (lm/W), CCT in kelvin (K), power factor, lifetime in years (and whether value is estimated), and life (and whether value is estimated). For lamps with multiple modes of operation (such as variable CCT or CRI), the certification report must also list which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode. Lifetime and life are estimated values until testing is complete. When reporting estimated values, the certification report must specifically describe the prediction method, which must be generally representative of the methods specified in appendix BB. Manufacturers are required to maintain records per § 429.71 of the development of all estimated values and any associated initial test data.

(c) *Rounding requirements.* (1) Round input power to the nearest tenth of a watt.

(2) Round lumen output to three significant digits.

(3) Round lamp efficacy to the nearest tenth of a lumen per watt.

(4) Round correlated color temperature to the nearest 100 Kelvin.

(5) Round color rendering index to the nearest whole number.

(6) Round power factor to the nearest hundredths place.

(7) Round lifetime to the nearest whole hour.

(8) Round standby mode power to the nearest tenth of a watt.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.2 is amended by adding in alphabetical order the definitions of "Integrated light-emitting diode lamp" and "Lifetime of an integrated light-emitting diode lamp" to read as follows:

§ 430.2 Definitions.

* * * * *

Integrated light-emitting diode lamp means an integrated LED lamp as defined in ANSI/IES RP–16 (incorporated by reference; see § 430.3).

* * * * *

Lifetime of an integrated light-emitting diode lamp means the length of operating time between first use and failure of 50 percent of the sample units (as required by § 429.56(a)(1) of this chapter), when measured in accordance with the test procedures described in section 4 of appendix BB to subpart B of this part.

* * * * *

■ 7. Section 430.3 is amended by:

■ a. Removing the text "appendix V1" in paragraph (o)(9), and adding in its place, the text "appendices V1 and BB";

■ b. Adding paragraphs (o)(10), (o)(11) and (o)(12); and

■ c. Removing the text "and Z" in paragraph (p)(5), and adding in its place, the text ", Z, and BB".

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(o) * * *

(10) IES LM–84–14, ("IES LM–84"), Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires, approved March 31, 2014; IBR approved for appendix BB to subpart B.

(11) ANSI/IES RP–16–10 ("ANSI/IES RP–16"), Nomenclature and Definitions for Illuminating Engineering, approved October 15, 2005; IBR approved for § 430.2.

(12) IES TM–28–14, ("IES TM–28"), Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires, approved May 20, 2014; IBR approved for appendix BB to subpart B.

* * * * *

■ 8. Section 430.23 is amended by adding paragraphs (x)(1)(ii), (x)(2)(iv), and (ee) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(x) * * *

(1) * * *

(ii) For a ceiling fan light kit with medium screw base sockets that is packaged with integrated LED lamps, measure lamp efficacy in accordance with paragraph (ee) of this section.

* * * * *

(2) * * *

(iv) For a ceiling fan light kit packaged with integrated LED lamps, measure lamp efficacy in accordance with paragraph (ee) of this section for each lamp basic model.

* * * * *

(ee) *Integrated light-emitting diode lamp.* (1) The input power of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart.

(2) The lumen output of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart.

(3) The lamp efficacy of an integrated light-emitting diode lamp must be calculated in accordance with section 3 of appendix BB of this subpart.

(4) The correlated color temperature of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart.

(5) The color rendering index of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart.

(6) The power factor of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart.

(7) The time to failure of an integrated light-emitting diode lamp must be measured in accordance with section 4 of appendix BB of this subpart.

(8) The standby mode power must be measured in accordance with section 5 of appendix BB of this subpart.

■ 9. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

The testing for general service fluorescent lamps, general service incandescent lamps (with the exception of lifetime testing), incandescent reflector lamps, medium base compact fluorescent lamps, fluorescent lamp ballasts, and integrated light-emitting diode lamps must be conducted by test laboratories accredited by an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable testing.

■ 10. Appendix BB to subpart B of part 430 is added to read as follows:

Appendix BB to Subpart B of Part 430—Uniform Test Method for Measuring the Input Power, Lumen Output, Lamp Efficacy, Correlated Color Temperature (CCT), Color Rendering Index (CRI), Power Factor, Time to Failure, and Standby Mode Power of Integrated Light-Emitting Diode (LED) Lamps

Note: On or after December 28, 2016, any representations made with respect to the energy use or efficiency of integrated light-emitting diode lamps must be made in accordance with the results of testing pursuant to this appendix.

1. *Scope:* This appendix specifies the test methods required to measure input power, lumen output, lamp efficacy, CCT, CRI, power factor, time to failure, and standby mode power for integrated LED lamps.

2. Definitions

2.1. The definitions specified in section 1.3 of IES LM–79–08 except section 1.3(f) (incorporated by reference; see § 430.3) apply.

2.2. *Initial lumen output* means the measured lumen output after the lamp is initially energized and stabilized using the stabilization procedures in section 3 of this appendix.

2.3. *Interval lumen output* means the measured lumen output at constant intervals after the initial lumen output measurement in accordance with section 4 of this appendix.

2.4. *Rated input voltage* means the voltage(s) marked on the lamp as the intended operating voltage. If not marked on the lamp, assume 120 V.

2.5. *Test duration* means the operating time of the LED lamp after the initial lumen output measurement and before, during, and including the final lumen output measurement, in units of hours.

2.6. *Time to failure* means the time elapsed between the initial lumen output measurement and the point at which the lamp reaches 70 percent lumen maintenance as measured in section 4 of this appendix.

3. Active Mode Test Method for Determining Lumen Output, Input Power, CCT, CRI, Power Factor, and Lamp Efficacy

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–79–08 (incorporated by reference; see § 430.3).

3.1. Test Conditions and Setup

3.1.1. Establish the ambient conditions, power supply, electrical settings, and instrumentation in accordance with the specifications in sections 2.0, 3.0, 7.0, and 8.0 of IES LM–79–08 (incorporated by reference; see § 430.3), respectively.

3.1.2. Position an equal number of integrated LED lamps in the base-up and base-down orientations throughout testing; if the position is restricted by the manufacturer, test units in the manufacturer-specified position.

3.1.3. Operate the integrated LED lamp at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages including 120 volts, operate the lamp at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, operate the lamp at the highest rated input voltage. Additional tests may be conducted at other rated voltages.

3.1.4. Operate the lamp at the maximum input power. If multiple modes occur at the same maximum input power (such as variable CCT or CRI), the manufacturer can select any of these modes for testing; however, all measurements described in sections 3 and 4 of this appendix must be taken at the same selected mode. The test report must indicate which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode.

3.2. Test Method, Measurements, and Calculations

3.2.1. The test conditions and setup described in section 3.1 of this appendix apply to this section 3.2.

3.2.2. Stabilize the integrated LED lamp prior to measurement as specified in section 5.0 of IES LM–79–08 (incorporated by reference; see § 430.3). Calculate the stabilization variation as [(maximum—minimum)/minimum] of at least three readings of the input power and lumen output over a period of 30 minutes, taken 15 minutes apart.

3.2.3. Measure the input power in watts as specified in section 8.0 of IES LM–79–08.

3.2.4. Measure the input voltage in volts as specified in section 8.0 of IES LM–79–08.

3.2.5. Measure the input current in amps as specified in section 8.0 of IES LM–79–08.

3.2.6. Measure lumen output as specified in section 9.1 and 9.2 of IES LM–79–08. Do not use goniophotometers.

3.2.7. Determine CCT according to the method specified in section 12.0 of IES LM–79–08 with the exclusion of section 12.2 and 12.5 of IES LM–79–08. Do not use goniophotometers.

3.2.8. Determine CRI according to the method specified in section 12.0 of IES LM–79–08 with the exclusion of section 12.2 and 12.5 of IES LM–79–08. Do not use goniophotometers.

3.2.9. Determine lamp efficacy by dividing measured initial lumen output by the measured input power.

3.2.10. Determine power factor for AC-input lamps by dividing measured input power by the product of the measured input voltage and measured input current.

4. Active Mode Test Method to Measure Time to Failure

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–84 (incorporated by reference; see § 430.3) and IES TM–28 (incorporated by reference; see § 430.3).

4.1. Lamp Handling, Tracking, and Time Recording

4.1.1. Handle, transport, and store the integrated LED lamp as described in section 7.2 of IES LM–84 (incorporated by reference; see § 430.3).

4.1.2. Mark and track the integrated LED lamp as specified in section 7.3 of IES LM–84.

4.1.3. Measure elapsed operating time and calibrate all equipment as described in section 7.5 of IES LM–84.

4.1.4. Check the integrated LED lamps regularly for failure as specified in section 7.8 of IES LM–84.

4.2. *Measure Initial Lumen Output.* Measure the initial lumen output according to section 3 of this appendix.

4.3. *Test Duration.* Operate the integrated LED lamp for a period of time (the test duration) after the initial lumen output measurement and before, during, and including the final lumen output measurement.

4.3.1. There is no minimum test duration requirement for the integrated LED lamp. The test duration is selected by the manufacturer. See section 4.6 of this appendix for instruction on the maximum time to failure.

4.3.2. The test duration only includes time when the integrated LED lamp is energized and operating.

4.4. Operating Conditions and Setup Between Lumen Output Measurements

4.4.1. Electrical settings must be as described in section 5.1 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.2. LED lamps must be handled and cleaned as described in section 4.1 of IES LM–84.

4.4.3. Vibration around each lamp must be as described in section 4.3 of IES LM–84.

4.4.4. Ambient temperature conditions must be as described in section 4.4 of IES LM–84. Maintain the ambient temperature at 25 °C ± 5 °C.

4.4.5. Humidity in the testing environment must be as described in section 4.5 of IES LM–84.

4.4.6. Air movement around each lamp must be as described in section 4.6 of IES LM–84.

4.4.7. Position a lamp in either the base-up and base-down orientation throughout testing. An equal number of lamps in the sample must be tested in the base-up and base-down orientations, except that, if the manufacturer restricts the position, test all of the units in the sample in the manufacturer-specified position.

4.4.8. Operate the lamp at the rated input voltage as described in section 3.1.3 of this appendix for the entire test duration.

4.4.9. Operate the lamp at the maximum input power as described in section 3.1.4 of this appendix for the entire test duration.

4.4.10. Line voltage waveshape must be as described in section 5.2 of IES LM–84.

4.4.11. Monitor and regulate rated input voltage as described in section 5.4 of IES LM–84.

4.4.12. Wiring of test racks must be as specified in section 5.5 of IES LM–84.

4.4.13. Operate the integrated LED lamp continuously.

4.5. Measure Interval Lumen Output. Measure interval lumen output according to section 3 of this appendix.

4.5.1. Record interval lumen output and elapsed operating time as described in section 4.2 of IES TM–28 (incorporated by reference; see § 430.3).

4.5.1.1. For test duration values greater than or equal to 3,000 hours and less than 6,000 hours, measure lumen maintenance of the integrated LED lamp at an interval in accordance with section 4.2.2 of IES TM–28.

4.5.1.2. For test duration values greater than or equal to 6,000 hours, measure lumen maintenance at an interval in accordance with section 4.2.1 of IES TM–28.

4.6. Calculate Lumen Maintenance and Time to Failure

4.6.1. Calculate the lumen maintenance of the lamp at each interval by dividing the interval lumen output “x_t” by the initial lumen output “x_0”. Measure initial and interval lumen output in accordance with sections 4.2 and 4.5 of this appendix, respectively.

4.6.2. For lumen maintenance values less than 0.7, including lamp failures that result in complete loss of light output, time to failure is equal to the previously recorded lumen output measurement (at a shorter test duration) where the lumen maintenance is greater than or equal to 0.7.

4.6.3. For lumen maintenance values equal to 0.7, time to failure is equal to the test duration.

4.6.4. For lumen maintenance values greater than 0.7, use the following method:

4.6.4.1. For test duration values less than 3,000 hours, do not project time to failure. Time to failure equals the test duration.

4.6.4.2. For test duration values greater than or equal to 3,000 hours but less than 6,000 hours, time to failure is equal to the lesser of the projected time to failure calculated according to section 4.6.4.2.1 of this appendix or the test duration multiplied by the limiting multiplier calculated in section 4.6.4.2.2 of this appendix.

4.6.4.2.1. Project time to failure using the projection method described in section 5.1.4 of IES TM–28 (incorporated by reference; see § 430.3). Project time to failure for each individual LED lamp. Do not use data obtained prior to a test duration value of 1,000 hours.

4.6.4.2.2. Calculate the limiting multiplier from the following equation:

$$Limiting\ multiplier = \frac{1}{600} * test\ duration - 4$$

4.6.4.3. For test duration values greater than 6,000 hours, time to failure is equal to the lesser of the projected time to failure calculated according to section 4.6.4.3.1 or the test duration multiplied by six.

4.6.4.3.1. Project time to failure using the projection method described in section 5.1.4 of IES TM–28 (incorporated by reference; see § 430.3). Project time to failure for each individual LED lamp. Data used for the time to failure projection method must be as specified in section 5.1.3 of IES TM–28.

5. Standby Mode Test Method for Determining Standby Mode Power

Measure standby mode power consumption for integrated LED lamps capable of operating in standby mode. The standby mode test method in this section 5 may be completed before or after the active mode test method for determining lumen output, input power, CCT, CRI, power factor, and lamp efficacy in section 3 of this appendix. The standby mode test method in this section 5 must be completed before the active mode test method for determining time to failure in section 4 of this appendix. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–79 (incorporated by reference; see § 430.3) and IEC 62301 (incorporated by reference; see § 430.3).

5.1. Test Conditions and Setup

5.1.1. Establish the ambient conditions, power supply, electrical settings, and instrumentation in accordance with the specifications in sections 2.0, 3.0, 7.0, and 8.0 of IES LM–79 (incorporated by reference; see § 430.3), respectively. Maintain the ambient temperature at 25 °C ± 1 °C.

5.1.2. Position a lamp in either the base-up and base-down orientation throughout testing. An equal number of lamps in the sample must be tested in the base-up and base-down orientations.

5.1.3. Operate the integrated LED lamp at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages, operate the integrated LED lamp at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, operate the integrated LED lamp at the highest rated input voltage.

5.2. Test Method, Measurements, and Calculations

5.2.1. The test conditions and setup described in section 3.1 of this appendix apply to this section.

5.2.2. Connect the integrated LED lamp to the manufacturer-specified wireless control network (if applicable) and configure the integrated LED lamp in standby mode by sending a signal to the integrated LED lamp instructing it to have zero light output. Lamp must remain connected to the network throughout the duration of the test.

5.2.3. Stabilize the integrated LED lamp as specified in section 5 of IEC 62301 (incorporated by reference; see § 430.3) prior to measurement.

5.2.4. Measure the standby mode power in watts as specified in section 5 of IEC 62301.

[FR Doc. 2016–14481 Filed 6–30–16; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 127 July 1, 2016

Part IV

Department of Labor

29 CFR Part 5
41 CFR Part 50–201
Employment and Training Administration
20 CFR Part 655
Office of Workers' Compensation Programs
20 CFR Parts 702, 725, 726
Wage and Hour Division
29 CFR Parts 500, 501, 530, et al.
Occupational Safety and Health Administration
29 CFR Parts 1902, 1903
Employee Benefits Security Administration
29 CFR Parts 2560, 2575, 2590
Mine Safety and Health Administration
30 CFR Part 100

Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers' Compensation Programs

20 CFR Parts 702, 725, 726

Office of the Secretary

29 CFR Part 5

41 CFR Part 50–201

Wage and Hour Division

29 CFR Parts 500, 501, 530, 570, 578, 579, 801, 825

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903

Employee Benefits Security Administration

29 CFR Part 2560, 2575, 2590

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA31

Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Department of Labor is issuing this interim final rule to adjust the amounts of civil penalties assessed or enforced in its regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by annual adjustments for inflation. The Department is required to calculate the catch-up and subsequent annual adjustments based on the Consumer Price Index for all Urban Consumers. The Department must publish the interim final rule by July 1, 2016, and the new penalty levels are effective no later than August 1, 2016.

DATES: This interim final rule is effective August 1, 2016. See **SUPPLEMENTARY INFORMATION** for applicability dates. Interested persons are invited to submit written comments on this interim final rule on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1290–AA31, by either of the following methods:

Electronic Comments: Comments may be sent via *http://www.regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type in "Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Mail: Address written submissions to Tiffany Jones, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments that are mailed must be received by the date indicated for consideration.

Docket: For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Peters, Program Analyst, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5959 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Regulatory Information
II. Background
III. Section-by-Section Analysis
  A. Employment and Training Administration
  B. Office of Workers' Compensation Programs
  C. Office of the Secretary
  D. Wage and Hour Division
  E. Occupational Safety and Health Administration
  F. Employee Benefits Security Administration
  G. Mine Safety and Health Administration
IV. Paperwork Reduction Act
V. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
VII. Other Regulatory Considerations
  a. The Unfunded Mandates Reform Act of 1995
  b. Executive Order 13132: Federalism
  c. Executive Order 13175: Indian Tribal Governments
  d. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  e. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  f. Environmental Impact Assessment
  g. Executive Order 13211: Energy Supply
  h. Executive Order 12630: Constitutionally Protected Property Rights
  i. Executive Order 12988: Civil Justice Reform Analysis

I. Regulatory Information

The U.S. Department of Labor (Department) is publishing this interim final rule (IFR) to adjust its civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). This law requires the Department to publish an initial "catch-up adjustment" through an interim final rule.

Pursuant to the Inflation Adjustment Act and 5 U.S.C. 553(b)(3)(B), the Department finds that good cause exists for issuing this IFR without prior notice and comment. By operation of the Inflation Adjustment Act, the Department must publish the catch-up adjustment by July 1, 2016, and the rule must be effective no later than August 1, 2016. The Inflation Adjustment Act further provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Additionally, the Inflation Adjustment Act provides a clear formula for adjustment of the civil penalties, leaving little room for discretion. For these reasons, the Department finds that notice and comment would be impracticable and unnecessary in this situation and contrary to the language of the Inflation Adjustment Act.

II. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the "Prior Inflation Adjustment Act''), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up'' adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation.

The Inflation Adjustment Act amends the Prior Inflation Adjustment Act in two key respects. First, the Inflation Adjustment Act rescinds an exemption that previously disallowed inflationary adjustments for violations of the Occupational Safety and Health Act (OSH Act). As a result, the Department is updating the penalties under the OSH Act for the first time since 1990.

Second, the Inflation Adjustment Act substantially revises the method of calculating inflation adjustments. The Prior Inflation Adjustment Act required adjustments to civil penalties to be rounded significantly. For example, a penalty increase that was greater than $1,000, but less than or equal to $10,000, would be rounded to the nearest multiple of $1,000. As a result, penalties were increased infrequently, and when they were finally increased, the amounts of the increases were sometimes substantial. Over time, this formula caused most of the Department's penalties to lose value relative to total inflation for long periods of time, thereby undermining the Prior Inflation Adjustment Act's purposes of maintaining the deterrent effect of civil money penalties and promoting compliance with the law.

The Inflation Adjustment Act has removed these rounding rules; now, penalties are simply rounded to the nearest dollar. This rounding ensures that penalties will be increased each year to more effectively keep up with inflation, and ensures that penalties are more evenly established.

Furthermore, the Inflation Adjustment Act provides for an initial "catch-up'' adjustment that generally excludes prior inflationary adjustments under the Prior Inflation Adjustment Act. For this catch-up adjustment, the Inflation Adjustment Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the penalty amount, the maximum penalty level, or range of minimum and maximum penalties was established (*i.e.*, originally enacted by Congress or by regulation) or last adjusted other than pursuant to the Prior Inflation Adjustment Act. That amount becomes the basis of any such catch-up adjustment, subject to a cap on any penalty increase of 150 percent of the current penalty amount as of November 2015—allowing for a total new penalty of no more than 250 percent of the November 2015 penalty amount. The Inflation Adjustment Act also mandates that the catch-up adjustment apply to any civil monetary penalty assessed after August 1, 2016, "including those whose associated violation predated such increase.'' Pub. L. 114–74 at § 701. The adjusted civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the Inflation Adjustment Act. Therefore, violations occurring on or before November 2, 2015, as well as assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts currently set forth in the the Department's prior regulations at 20 CFR parts 655, 702, 725, and 726; 29 CFR parts 5, 500, 501, 530, 570, 578, 579, 801, 825, 1902, 1903, 2560, 2575, and 2590; 30 CFR part 100; and 41 CFR part 50–201 (or as set forth by statute if the amount has not yet been adjusted by regulation)..

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.[1] The Department first identified for each penalty the year and corresponding amount or amounts for which the maximum penalty level or range of minimum and maximum penalties was established or last adjusted, other than pursuant to the Prior Inflation Adjustment Act. Then the Department determined the applicable inflation adjustments based upon the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) for the preceding year versus the year of enactment or last adjustment.[2] The Department compared the amount of the penalty adjustment against the 150 percent cap and added the lower of the two to the existing penalty to compute the new penalty. This IFR establishes the initial catch-up adjustment for civil penalties as described.[3]

III. Section-by-Section Analysis

The following section-by-section discussion of this IFR presents the contents of each section in more detail. The Department invites comments on any issues addressed in this IFR.

A. Employment and Training Administration (20 CFR Part 655)

1. General

This section A of the preamble addresses civil monetary penalties authorized by the Immigration and Nationality Act's (INA) D–1 and H–1B visa programs and that are reflected in the Employment and Training Administration's regulations, but are enforced by the Department's Wage and Hour Division (WHD). Paragraph 2(a) involves violations of the D–1 visa program, and paragraph 2(b) involves violations of the H–1B visa program.

2. Specific Penalty Increases

a. Section 655.620—Civil Money Penalties and Other Remedies

Section 258(c)(4)(E)(i) of the INA, 8 U.S.C. 1288(c)(4)(E)(i), and existing 20 CFR 655.620(a), provide for the imposition of civil money penalties where the Secretary of Labor (Secretary) finds, after notice and an opportunity for hearing, that there has been a violation of, or misrepresentation in, the attestations by employers using alien crewmembers for longshore activities in U.S. ports, pursuant to the D–1 visa program, or of the Secretary's regulations regarding the D–1 program. These authorities provide that such civil money penalties are not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation. The maximum penalty amount last established by statute or regulation, other than the Prior Inflation Adjustment Act, was set in 1990 and is the same as the existing maximum penalty amount. *See* Immigration Act of 1990, Pub. L. 101–649, 203(a)(1) (Nov. 29, 1990).

---

[1] OMB Mem. M–16–06 (Feb. 24, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[2] OMB has provided the relevant year-over-year multipliers, rounded to 5 decimal points. *Id.* at 6.

[3] Appendix 1 consists of a table that provides ready access to key information about each penalty.

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of $8,908. The amount of the increase from $5,000 to $8,908 is $3,908, which is less than the statutory cap of 150 percent of the existing $5,000 penalty, which is $7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.620(a) is revised to increase the maximum penalty for violations specified therein from $5,000 to $8,908 for each alien crewmember with respect to whom there has been a violation.

b. Section 655.810—What remedies may be ordered if violations are found?

Section 212(n)(2)(C) of the INA, 8 U.S.C. 1182(n)(2)(C), and existing 20 CFR 655.810(b) provide for the imposition of civil money penalties for certain violations of the H–1B visa program. There are three levels of civil money penalties provided for by these authorities.

First, existing § 655.810(b)(1) provides for a civil money penalty, not to exceed $1,000 per violation, for certain specific violations of the H–1B program. *See* § 655.810(b)(1)(i)–(vi). The maximum penalty amount last established by statute or regulation, other than the Prior Inflation Adjustment Act, was set in 1990 and is the same as the existing maximum penalty amount. *See* Immigration Act of 1990, Pub. L. 101–649, 205(3) (Nov. 29, 1990). In 1998, Congress amended the INA by, in part, providing for additional civil money penalties in the H–1B program, as discussed below. *See* American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Div. C, Title IV, of Pub. L. 105–277, 413(a) (Oct. 21, 1998). The 1998 amendments did not adjust the $1,000 civil money penalty reflected in existing § 655.810(b)(1). Accordingly, we consider 1990 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of $1,782. The amount of the increase from $1,000 to $1,782 is $782, which is less than the statutory cap of 150 percent of the existing $1,000 penalty, which is $1,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.810(b)(1) is revised to increase the maximum penalty for violations specified therein from $1,000 to $1,782 per violation.

Second, existing § 655.810(b)(2) provides for a civil money penalty, not to exceed $5,000 per violation for certain willful violations specified therein and for discrimination against an employee, as described in 20 CFR 655.801(a). The civil money penalty for discrimination against an employee is also referenced in § 655.801(b). The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1998 and is the same as the existing maximum penalty amount. *See* ACWIA § 413(a).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1998 of 1.45023, which resulted in a maximum penalty of $7,251. The amount of the increase from $5,000 to $7,251 is $2,251, which is less than the statutory cap of 150 percent of the existing $5,000 penalty, which is $7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.810(b)(2) is revised to increase the maximum penalty for violations specified therein from $5,000 per violation to $7,251 per violation. Conforming changes to reflect the adjusted civil money penalty amount were also made to 20 CFR 655.801(b).

Third, existing § 655.810(b)(3) provides for a civil money penalty, not to exceed $35,000 per violation, where an employer displaced a U.S. worker employed by the employer in the period beginning 90 days before and ending 90 days after the filing of an H–1B petition in conjunction with certain willful violations specified therein. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1998 and is the same as the existing maximum penalty amount. *See* ACWIA § 413(a).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1998 of 1.45023, which resulted in a maximum penalty of $50,758. The amount of the increase from $35,000 to $50,758 is $15,758, which is less than the statutory cap of 150 percent of the existing $35,000 penalty, which is $52,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.810(b)(3) is revised to increase the maximum penalty for violations specified therein from $35,000 to $50,578 per violation.

B. Office of Workers' Compensation Programs (20 CFR Parts 702, 725, 726)

1. General

This section B of the preamble addresses the civil monetary penalties administered by Office of Workers' Compensation Programs (OWCP) to enforce provisions of the Longshore and Harbor Workers' Compensation Act (Longshore Act), and the Longshore Act extensions, the Defense Base Act, the District of Columbia Workmen's Compensation Act, the Outer Continental Shelf Lands Act, and the Black Lung Benefits Act (BLBA). Paragraphs 2(a) through (f) explain revisions to each of the civil penalties administered and enforced by OWCP.

2. Specific Penalty Increases

a. Section 702.204—Employer's Report; Penalty for Failure To Furnish and or Falsifying

Existing § 702.201 requires employers to furnish a report of an employee's injury (resulting in the loss of one or more shifts) or death within 10 days of the injury or death, or an employer's knowledge of the same, and to provide additional supplemental information upon request. Existing § 702.204 provides that an employer who, on or after November 17, 1997, knowingly and willfully fails or refuses to file any report required by § 702.201 or who knowingly or willfully makes a false statement or misrepresentation on any report shall be subject to a civil penalty not to exceed $11,000 for each failure, refusal, false statement, or misrepresentation. It provides that an employer who does so before November 17, 1997 shall be subject to a civil penalty not to exceed $10,000 for each instance. The maximum penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was $10,000 in 1984. *See* Public Law 98–426.

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, $10,000, by the inflation adjustment factor for 1984 of 2.25867, which resulted in a penalty of $22,587 (rounded to the nearest dollar). The amount of the increase from existing § 702.204's $11,000 penalty to $22,587 is $11,587. $11,587 is less than the statutory cap of 150 percent of the existing $11,000 penalty, which is $16,500. Accordingly, the amount of the increase is not limited by the statutory cap. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.204 therefore increases the maximum penalty for each failure to furnish or falsifying an employer's report from $11,000 to $22,587.

b. Section 702.236—Penalty for Failure To Report Termination of Payments

Existing § 702.235 requires employers to notify the district director within 16 days after making a final payment of compensation. Existing § 702.236 provides that an employer who, on or after November 17, 1997, fails to notify the district director that a final payment of compensation has been made as required by § 702.235, shall be assessed a civil penalty in the amount of $110. It provides that an employer who does so before November 17, 1997 shall be assessed a civil penalty in the amount of $100. The penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was $100 in 1927. *See* 33 U.S.C. 914(g).

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, $100, by the inflation adjustment factor for 1927 of 13.66885, which resulted in a penalty of $1,367 (rounded to the nearest dollar). The amount of the increase from existing § 702.236's $110 penalty to $1,367 is $1,257, which would be more than the statutory cap of 150 percent of the existing $110 penalty, which is $165. Accordingly, the amount of the increase is limited by the statutory cap to a total of $165. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.236 therefore increases the penalty for failure to report termination of payments from $110 to $275 (the current $110 penalty amount plus the $165 statutory cap).

c. Section 702.271—Discrimination; Against Employees Who Bring Proceedings, Prohibition and Penalty

Existing § 702.271(a)(1) provides that no employer or its agent may discharge or in any manner discriminate against an employee as to his or her employment because that employee has claimed or attempted to claim compensation under the Longshore and Harbor Workers' Compensation Act, or has testified or is about to testify in a proceeding under that Act. Existing § 702.271(a)(2) provides that any employer who, on or after November 17, 1997, violates § 702.271 shall be liable for a penalty of not less than $1,100 or more than $5,500. It provides that an employer who does so before November 17, 1997 shall be liable for a penalty of not less than $1,000 or more than $5,000. The penalty amounts last established by statute or regulation other than pursuant to the Inflation Adjustment Act were a minimum amount of $1,000 and a maximum amount of $5,000 in 1984. *See* Public Law 98–426.

To adjust the civil penalties for this section, the Department multiplied the minimum and maximum penalty amounts last established by statute or regulation other than pursuant to the Inflation Adjustment Act, $1,000 and $5,000, respectively, by the inflation adjustment factor for 1984 of 2.25867, which resulted in a minimum penalty of $2,259 (rounded to the nearest dollar) and a maximum penalty of $11,293 (rounded to the nearest dollar). The amount of the increase from existing § 702.271(a)(2)'s $1,100 minimum penalty to $2,259 is $1,159, which is less than the statutory cap of 150 percent of the existing $1,100 minimum penalty, which is $1,650. The amount of the increase from existing § 702.271(a)(2)'s $5,500 maximum penalty to $11,293 is $5,793. $5,793 is less than the statutory cap of 150 percent of the existing $5,500 maximum penalty, which is $8,250. Accordingly, neither the amount of the increased minimum nor the increased maximum penalty is limited by the statutory cap. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.271 therefore increases the minimum penalty for discrimination against employees who claim compensation or bring proceedings under the Act from $1,100 to $2,259, and increases the maximum penalty from $5,500 to $11,293.

The Department also changes the "that" in the first sentence of § 702.271(a)(2) to "than" to correct a typo in the regulation and twice corrects the phrase "liable to a penalty" to "liable for a penalty." No substantive change results from or is intended by these technical edits.

d. Section 725.621—Reports

Existing § 725.621(a) requires employers to notify the district director upon making a first payment of benefits and upon suspension, reduction, or increase of payments. Existing § 725.621(b) requires employers to notify the district director, within 16 days after making a final payment of benefits. Existing § 724.621(c) allows the Director to prescribe additional reporting by operators, other employers, or carriers. Existing § 725.621(d) provides that an employer who does not file a report required by the section, after January 19, 2001, shall be subject to a civil penalty not to exceed $550 for each failure or refusal to file. It provides that an employer who does so on or before January 19, 2001, shall be subject to a civil penalty not to exceed $500 for each failure or refusal to file. The maximum penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was $500 in 1978. *See* Public Law 95–239.

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, $500, by the inflation adjustment factor for 1978 of 3.54453, which resulted in a penalty of $1,772 (rounded to the nearest dollar). The amount of the increase from existing § 725.621(d)'s $550 penalty to $1,772 is $1,222, which is more than the statutory cap of 150 percent of the existing $550 penalty, which is $825. Accordingly, the amount of the increase is limited by the statutory cap to a total of $825. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 725.261 therefore increases the maximum penalty for each failure or refusal to furnish an employer's required report from $550 to $1,375 (the current $550 penalty amount plus the $825 statutory cap).

e. Section 726.300—Purpose and Scope

Section 423 of the Black Lung Benefits Act and existing § 726.4 require each coal mine operator to secure its liability for benefits either by qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or by insuring and keeping insured the payment of such benefits with a licensed workers' compensation insurer. 30 U.S.C. 933(a); 20 CFR 726.4. Section 423 also provides that each coal mine operator failing to meet its insurance obligation shall be subject to a civil money penalty of up to $1,000 per day. 30 U.S.C. 933(d)(1). Existing § 726.300 identifies the purpose and scope of Subpart D of Part 726, which is to set forth definitions, criteria, and procedures for assessing this civil money penalty. In so doing, it references the Black Lung Benefits Act's maximum daily penalty of $1,000. This statutory maximum, however, is adjusted by the

Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Thus, the existing regulation is amended to refer to the adjusted penalty amount authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

f. Section 726.302—Determination of Penalty

Existing § 726.302 provides the method for determining the amount of any penalty assessed against a coal mine operator for failure to secure the payment of benefits in violation of Section 423 of the Black Lung Benefits Act and existing § 726.4. Existing § 726.302(b) provides that the penalty will be calculated by multiplying the daily base penalty amount or amounts by the number of days during which the operator was required to and failed to secure its obligations. Existing § 726.302(c)(i) explains that the daily base penalty amount is $100 per day for operators employing fewer than 25 employees, $200 per day for operators employing 25 to 50 employees, $300 per day for operators employing 51 to 100 employees, and $400 per day for operators employing more than 100 employees. Existing § 726.302(c)(4) provides that the daily base penalty amounts in § 726.302(c)(2)(i) will increase by $100 on the 11th day after the operator receives the Director's notice of violation. Existing § 726.302(c)(5) provides that if an operator or certain of its related entities has violated § 726.4 and been assessed a penalty, the daily base penalty amount shall increase by $300. It also provides that an operator who violates § 726.4 after January 19, 2001, shall be subject to a maximum daily base penalty of $1,100, and that an operator that violates it on or before January 19, 2001, shall be subject to a maximum daily base penalty amount of $1,000. The daily base penalty amounts and increases in paragraphs (c)(2)(i), (c)(4), and (c)(5) were established by regulation in 2001 and have not subsequently been increased by the Inflation Adjustment Act or otherwise. *See* 65 FR 79920. The maximum daily base penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was $1,000 in 1978. *See* Public Law 95–239.

To adjust the existing daily base penalty for operators employing fewer than 25 employees, the Department multiplied the existing $100 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of $134 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing 25 to 50 employees, the Department multiplied the existing $200 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of $268 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing 51 to 100 employees, the Department multiplied the existing $300 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of $402 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing more than 100 employees, the Department multiplied the existing $400 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of $535 (rounded to the nearest dollar). To adjust the existing daily base penalty increase for operators who fail to respond to the Director's notice of violation more than 10 days after receipt in paragraph (c)(4), the Department multiplied the existing $100 penalty increase by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty increase of $134 (rounded to the nearest dollar). To adjust the existing daily base penalty increase for operators who have been subject to a previous penalty assessment in paragraph (c)(5), the Department multiplied the existing $300 penalty increase by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty increase of $402 (rounded to the nearest dollar). The Department has not previously updated these penalty amounts pursuant to the Inflation Adjustment Act and the multiplier for each (1.33842) is less than 2.5, the penalty amount (100 percent) plus the statutory cap (150 percent). Thus, the amount of the increase for each is necessarily less than the statutory cap of 150 percent of the existing penalty amount. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 726.302 therefore increases the daily base penalty for operators employing fewer than 25 employees from $100 to $134; increases the daily base penalty for operators employing 25 to 50 employees from $200 to $268; increases the daily base penalty for operators employing 51 to 100 employees from $300 to $402; increases the daily base penalty for operators employing more than 100 employees from $400 to $535; increases the daily base penalty increase for operators who continue to be in violation more than 10 days after receiving the Director's notice of violation from $100 to $134; and increases the daily base penalty increase for operators who have been subject to a previous penalty assessment from $300 to $402.

To adjust the existing maximum daily base penalty in paragraph (c)(5), the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, $1,000, by the inflation adjustment factor for 1978 of 3.54453, which resulted in a penalty of $3,545 (rounded to the nearest dollar). The amount of the increase from existing § 726.302(c)(5)'s $1,100 maximum penalty to $3,545 is $2,445, which is more than the statutory cap of 150 percent of the existing $1,100 penalty, which is $1,650. Accordingly, the amount of the increase is limited by the statutory cap to a total of $1,650. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 726.302 therefore increases the maximum daily base penalty for any violation of § 726.4 from $1,100 to $2,750 (the current $1,100 penalty amount plus the $1,650 statutory cap).

The Department also moves discussion of the maximum daily base penalty from subparagraph (c)(5) to new subparagraph (c)(6) for greater clarity. No substantive change results from or is intended by this technical edit.

C. Office of the Secretary (29 CFR Part 5 and 41 CFR Part 50–201)

1. General

This section C of the preamble addresses the civil monetary penalties provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healey Public Contracts Act (PCA), as amended. These provisions are included in regulations established by the Office of the Secretary, which have been delegated to WHD for enforcement. Paragraphs 2(a) and (b) explain revisions to each of these civil money penalties.

2. Specific Penalty Increases

a. Section 5.8(a)—Liquidated Damages Under the Contract Work Hours and Safety Standards Act

Section 3702(c) of title 40 of the United States Code and existing 29 CFR 5.8(a) impose "liquidated damages" if a laborer or mechanic is not paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek on contracts covered by CWHSSA, to be computed with respect to each laborer or mechanic employed in violation of CWHSSA.[4] The penalty amount of $10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages was last established by statute or regulation other than the Prior Inflation Adjustment Act in 1962 and is the same as the existing penalty amount. *See* Contract Work Hours Standards Act, Title I of Public Law 87–581, § 102(b)(2) (Aug. 13, 1962).

To adjust the existing penalty for this section, the Department multiplied that penalty amount of $10 by the inflation adjustment factor for 1962 of 7.82362, which would have resulted in a penalty of $78. The amount of the increase from $10 to $78 is $68, which exceeds the statutory cap of 150 percent of the existing $10, which is $15; accordingly, the amount of the increase is limited by the statutory cap to a total of $15. Consequently, § 5.8(a) is revised to increase the penalty if a laborer or mechanic is not paid wages at least one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek from $10 to $25 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Conforming changes to reflect the adjusted penalty amount were also made to § 5.5(b)(2).

b. Section 50–201.3—Public Contracts, Department of Labor; Insertion of Stipulations.

Section 6503(b)(1) of title 41 of the United States Code and existing 41 CFR 50–201.3(e) impose "liquidated damages"[5] of $10 per day for each individual under 16 years of age and each incarcerated individual knowingly employed in the performance of a contract covered by the PCA, as amended. The penalty amount of $10 for each day and for each individual under 16 years of age and each incarcerated individual knowingly employed was last established by statute or regulation other than the Prior Inflation Adjustment Act in 1936 and is the same as the existing penalty amount. *See* Walsh-Healey Act of 1936, 49 Stat. 2036, § 2 (June 30, 1936).

To adjust the existing civil money penalty for this section, the Department multiplied that penalty amount of $10 by the inflation adjustment factor for 1936 of 16.98843, which would have resulted in a penalty of $170. The amount of the increase from $10 to $170 is $160, which exceeds the statutory cap of 150 percent of the existing $10 penalty, which is $15. Accordingly, the amount of the increase is limited by the statutory cap to a total of $15. Consequently, § 50–201.3(e) is revised to increase the penalty for the knowing employment on a covered contract of individuals under 16 or who are incarcerated from $10 to $25 per day.

D. Wage and Hour Division (29 CFR Parts 500, 501, 530, 570, 578, 579, 801, 825)

1. General

This section D of the preamble addresses the civil monetary penalties administered by WHD to enforce provisions of the Migrant and Seasonal Agricultural Worker Protection Act, the Immigration and Nationality Act,[6] the Fair Labor Standards Act, the Employee Polygraph Protection Act, and the Family and Medical Leave Act. Paragraphs 2(a) through (g) explain revisions to each of these civil penalties administered and enforced by WHD.

a. Section 500.1—Purpose and Scope

Section 503(a)(1) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1853(a)(1), and existing 29 CFR 500.1(e), authorize the Secretary to impose a civil money penalty of not more than $1,000 per violation on persons who violate MSPA or any regulation under MSPA. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1983 and is the same as the existing maximum penalty amount. *See* MSPA, Public Law 97–470 (Jan. 14, 1983).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1983 of 2.35483, which resulted in a maximum penalty of $2,355. The amount of the increase from $1,000 to $2,355 is $1,355, which is less than the statutory cap of 150 percent of the existing $1,000 penalty, which is $1,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 500.1(e) is revised to increase the maximum penalty for violations of MSPA or the MSPA regulations from $1,000 to $2,355 per violation.

b. Section 501.19—Civil Money Penalty Assessment

Section 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), authorizes the Secretary of Labor to impose appropriate penalties in order to assure employer compliance with the terms and conditions of employment under the H–2A visa program. Pursuant to this and other authorities, the Secretary has promulgated regulations through notice and comment rulemaking regarding the assessment of civil money penalties. *See, e.g.*, Final Rule, Temporary Agricultural Employment of H–2A Aliens in the United States, 75 FR 6884 (Feb. 12, 2010) (codified at 29 CFR part 501 and 20 CFR part 655) (2010 H–2A Final Rule). 29 CFR 501.19(a) of these regulations provides for the imposition of civil money penalties for each violation of the work contract, or the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in 29 CFR part 501. Section 501.19(c) through (f) provides the maximum civil money penalty amounts for various violations as specified below.

First, existing § 501.19(c) provides that a civil money penalty for each violation of the work contract or of the H–2A visa program's statutory or regulatory requirements will not exceed $1,500 per violation, with exceptions as specified below. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of $1,631. The amount of the increase from $1,500 to $1,631 is $131, which is less than the statutory cap of 150 percent of the existing $1,500 penalty, which is $2,250; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c) is revised to increase the maximum penalty for violations specified therein from $1,500 to $1,631 per violation.

---

[4] Although the statute and regulation refer to the amount assessed as "liquidated damages" it is appropriate to treat the amount as a civil money penalty for purposes of the Inflation Adjustment Act because the amount due is paid to the government, not the laborer or mechanic. Indeed, the Department of Labor has long recognized that the CWHSSA damages provision "operate[s] as [a] civil monetary penalt[y]." Letter to Honorable Carl Levin, Chairman, Subcommittee on Oversight of Government Management, from Ann McLaughlin, Secretary of Labor, (Feb. 22, 1988).

[5] Although the statute and regulation refer to the amount assessed as "liquidated damages" it is appropriate to treat the amount as a civil money penalty for purposes of the Inflation Adjustment Act because the amount due is paid to the government, not the worker. Indeed, the Department of Labor has long recognized that the Walsh-Healey Public Contracts Act damages provision "operate[s] as [a] civil monetary penalt[y]." Letter to Honorable Carl Levin, Chairman, Subcommittee on Oversight of Government Management, from Ann McLaughlin, Secretary of Labor, (Feb. 22, 1988).

[6] The Department and the Department of Homeland Security are jointly publishing a separate IFR to implement the Inflation Adjustment Act's requirements with respect to the civil money penalty provisions found at 29 CFR 503.23.

Second, existing § 501.19(c)(1) provides that a civil money penalty for each willful violation of the work contract, of the H–2A visa program's statutory or regulatory requirements, or for each act of discrimination prohibited by § 501.4 shall not exceed $5,000. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2008 and is the same as the existing maximum penalty amount. *See* Final Rule, Temporary Agricultural Employment of H–2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, 73 FR 77,110 (Dec. 18, 2008) (2008 H–2A Final Rule). This penalty amount was not adjusted by the H–2A 2010 Final Rule. Accordingly, we consider 2008 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for § 501.19(c)(1), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of $5,491. The amount of the increase from $5,000 to $5,491 is $491, which is less than the statutory cap of 150 percent of the existing $5,000 penalty, which is $7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(1) is revised to increase the maximum penalty for violations specified therein from $5,000 to $5,491.

Third, existing § 501.19(c)(2) provides that a civil money penalty for a violation of a housing or transportation safety and health provision of the work contract or of the H–2A visa program's statutory or regulatory requirements that proximately causes the death or serious injury of any worker shall not exceed $50,000 per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c)(2), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of $54,373. The amount of the increase from $50,000 to $54,373 is $4,373, which is less than the statutory cap of 150 percent of the existing $50,000 penalty, which is $75,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(2) is revised to increase the maximum penalty for violations specified therein from $50,000 to $54,373 per worker.

Fourth, existing § 501.19(c)(4) provides that a civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract or of the H–2A visa program's statutory or regulatory requirements that proximately causes the death or serious injury of any worker shall not exceed $100,000 per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c)(4), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of $108,745. The amount of the increase from $100,000 to $108,745 is $8,745, which is less than the statutory cap of 150 percent of the existing $100,000 penalty, which is $150,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(4) is revised to increase the maximum penalty for violations specified therein from $100,000 to $108,745 per worker.

Fifth, existing § 501.19(d) provides that a civil money penalty for failure to cooperate with a WHD investigation shall not exceed $5,000 per investigation. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2008 and is the same as the existing maximum penalty amount. *See* 2008 H–2A Final Rule. This penalty amount was not adjusted by the H–2A 2010 Final Rule. Accordingly, we consider 2008 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for § 501.19(d), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of $5,491. The amount of the increase from $5,000 to $5,491 is $491, which is less than the statutory cap of 150 percent of the existing $5,000 penalty, which is $7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(d) is revised to increase the maximum penalty for failure to cooperate with a WHD investigation from $5,000 to $5,491 per investigation.

Sixth, existing § 501.19(e) provides that a civil money penalty for laying off or displacing any U.S. worker employed, under the circumstances specified therein, shall not exceed $15,000 per violation per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(e), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of $16,312. The amount of the increase from $15,000 to $16,312 is $1,312, which is less than the statutory cap of 150 percent of the existing $15,000 penalty, which is $22,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(e) is revised to increase the maximum penalty for violations specified therein from $15,000 to $16,312 per violation per worker.

Finally, existing § 501.19(f) provides that a civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of the H–2A visa program's statutory or regulatory requirements, shall not exceed $15,000 per violation per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(f), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of $16,312. The amount of the increase from $15,000 to $16,312 is $1,312, which is less than the statutory cap of 150 percent of the existing $15,000 penalty, which is $22,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(f) is revised to increase the maximum penalty for violations specified therein from $15,000 to $16,312 per violation per worker.

c. Section 530.302—Amounts of Civil Money Penalties

Section 11(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 211(d), authorizes the Administrator of the WHD to issue such regulations and orders as necessary to assure compliance with the FLSA's requirements with respect to industrial homework. Pursuant to this and other authorities, the Administrator has promulgated regulations through notice and comment rulemaking. *See* Final Rule, Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers, 53 FR 45706 (Nov. 10, 1988) (codified at 29 CFR parts 516 and 530). Section 530.302 of these regulations provides for the imposition of civil money penalties. Existing § 530.302(a) imposes a civil money penalty of not more than $500 per affected homeworker for any violation of the FLSA related to homework[7], or of part 530, or of the assurances given in connection with the issuance of a homeworker certificate. Existing § 530.302(b) states that the amount of civil money penalties shall be determined per affected homeworker within the limits set forth in a following table, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature. The table appears in the existing regulation as follows in Table A:

TABLE A—EXISTING HOMEWORK PENALTIES

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$10–100	$100–200	$200–500
Monetary violations	$10–100	$100–200	
Employment of homeworkers without a certificate		$100–200	$200–500
Other violations of statutes, regulations or employer assurances	$10–100	$100–200	$200–500

The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was $500 in 1988 and is the same as the existing maximum penalty amount. *See* 53 FR 45706, 45724.

To adjust the existing civil money penalty for this section, the Department multiplied the maximum penalty amount of $500 by the inflation adjustment factor for 1988 of 1.97869, which resulted in a maximum penalty of $989. The amount of the increase from $500 to $989 is $489, which is less than the statutory cap of 150 percent of the existing $500 penalty, which is $750; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 530.302(a) and (b) are revised to increase the maximum penalty from $500 to $989 and the percentage of that maximum penalty amount for minor (2 percent to 20 percent); substantial (20 percent to 40 percent); or repeated, intentional, or knowing (40 percent to 100 percent) violations by the same percentages of the adjusted maximum penalty amount as under the existing section. As a result, the revised penalty amounts are $20–198 for a minor violation; $198–396 for a substantial violation; and $396–989 for a repeated, intentional, or knowing violation.

d. Section 578.3—What types of violations may result in a penalty being assessed?

Section 16(e)(2) of the FLSA, 29 U.S.C. 216(e)(2), and existing 29 CFR 578.3(a), provide for the assessment of civil money penalties for any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the FLSA. Existing § 578.3(a) provides for a civil money penalty of up to $1,100 per violation, and that level is the result of an inflation adjustment in 2001. *See* Final Rule, Adjustment of Civil Money Penalties for Inflation, 66 FR 63501 (Dec. 7, 2001). The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was $1,000 in 1989. *See* Fair Labor Standards Amendments of 1989, Pub. L. 101–157, § 9 (Nov. 17, 1989).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1989 of 1.89361, which resulted in a maximum penalty of $1,894. The amount of the increase from $1,100 to $1,894 is $794, which is less than the statutory cap of 150 percent of the existing $1,100 penalty, which is $1,650; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 578.3(a) is revised to increase the maximum penalty for a repeated or willful violation of section 6 (minimum wage) or section 7 (overtime) of the FLSA from $1,100 to $1,894 per violation.

Conforming changes to reflect the adjusted maximum civil money penalty amount were also made to § 579.1(a)(2). In addition, historical information concerning penalties for repeated or willful violations of Sections 6 or 7 of the FLSA contained in 29 CFR 578.1 is revised to reflect the passage of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74) and its requirement to make civil money penalty adjustments annually.

e. Section 579.1—Purpose and Scope

Section 16(e)(1)(A) of the FLSA and existing 29 CFR 579.1(a)(1)(i) provide for the imposition of civil money penalties for any violations of the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections. There are three levels of civil money penalties provided for by these authorities.

First, existing § 579.1(a)(1)(i)(A) provides for a civil money penalty, not to exceed $11,000, for each employee who was the subject of a child labor violation. This penalty corresponds to the statutory provision at 29 U.S.C. 216(e)(1)(A)(i). The penalty amount last established by statute or regulation for this provision other than the Prior

---

[7] Except for child labor violations, which are covered under 29 CFR part 579.

Inflation Adjustment Act was $11,000 in 2008. *See* Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110–233, § 302(a) (May 21, 2008).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of $12,080. The amount of the increase from $11,000 to $12,080 is $1,080, which is less than the statutory cap of 150 percent of the existing $11,000 penalty, which is $16,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 579.1(a)(1)(i)(A) is revised to increase the maximum penalty for violations of the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, from $11,000 to $12,080 for each employee who was the subject of such a violation.

Conforming changes to reflect the adjusted maximum civil money penalty amount were also made to 29 CFR 570.140(b)(1).

Second, existing § 579.1(a)(1)(i)(B) provides for a civil money penalty, not to exceed $50,000, for each violation of section 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to those sections that causes the death or serious injury of any employee under the age of 18 years. This penalty corresponds to the statutory provision at 29 U.S.C. 216(e)(1)(A)(ii). That maximum amount was last established by statute or regulation other than the Prior Inflation Adjustment Act in 2008 and is the same as the existing maximum penalty amount. *See* GINA § 302(a).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of $54,910. The amount of the increase from $50,000 to $54,910 is $4,910, which is less than the statutory cap of 150 percent of the existing $50,000 penalty, which is $75,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 579.1(a)(1)(i)(B) is revised to increase the maximum penalty for violations of that provision, from $50,000 to $54,910 for each such violation.

Section 579.5(a) has also been revised to remove superfluous language regarding the effective date of this civil money penalty. Conforming changes to reflect the adjusted maximum civil money penalty amount were also made to 29 CFR 570.140(b)(2).

Third, existing § 579.1(a)(1)(i)(B) also provides that the maximum penalty for a violation of section 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to those sections that causes the death or serious injury of any employee under the age of 18 years may be doubled if the violation is repeated or willful. Therefore, under revised § 579.1(a)(1)(i)(B), the maximum penalty amount for such a willful or repeated violation is calculated by doubling the adjusted penalty of $54,910 for a child labor violation resulting in serious injury or death (*i.e.*, $109,820). No change to regulatory text is needed to make this adjustment.

In addition, existing § 579.1(a) and (b) are revised to reflect the passage of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74) and its requirement to make civil money penalty adjustments annually, and to remove superseded information regarding the effective date of increased civil money penalties.

f. Section 801.42—Civil Money Penalties—Assessment

Section 6(a)(1) of the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. 2005(a)(1) and existing 29 CFR 801.42(a) impose a civil money penalty of not more than $10,000 for any violation of the EPPA or of part 801. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was $10,000 in 1988 and is the same as the existing maximum penalty amount. *See* EPPA, Pub. L. 100–347 (June 27, 1988).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1988 of 1.97869, which resulted in a penalty of $19,787. The amount of the increase from $10,000 to $19,787 is $9,787, which is less than the statutory cap of 150 percent of the existing $10,000 penalty, which is $15,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 801.42(a) is revised to increase the maximum penalty for a violation of the EPPA from $10,000 to $19,787.

g. Section 825.300—Employer Notice Requirements

Section 109(b) of the Family and Medical Leave Act (FMLA), as amended, 29 U.S.C. 2619(b), and existing 29 CFR 825.300(a)(1) provide for the assessment of a civil money penalty for each willful violation of the posting requirement of the FMLA. Existing § 825.300(a)(1) provides for a civil money penalty of up to $110 for each separate offense, and that level is the result of an inflation adjustment in 2008. *See* Final Rule, The Family and Medical Leave Act of 1993, 73 FR 67934 (Nov. 17, 2008). The penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was $100 in 1993. *See* FMLA of 1993, Pub. L. 103–3, § 109(b) (Feb. 5, 1993).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1993 of 1.63238, which resulted in a maximum penalty of $163. The amount of the increase from $110 to $163 is $53, which is less than the statutory cap of 150 percent of the existing $110 penalty, which is $165; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 578.300(a)(1) is revised to increase the penalty for violations of the posting requirement of the FMLA from $110 to $163 for each separate offense.

E. Occupational Safety and Health Administration (29 CFR Parts 1902, 1903)

1. General

This section E of the preamble addresses the civil monetary penalties administered by the Occupational Safety and Health Administration (OSHA) to enforce provisions of the Occupational Safety & Health Act of 1970 (OSH Act), as amended. Paragraph 2(a) explains conforming edits to the agency's State Plan regulations. Paragraph 2(b) explains revisions to each of the civil penalties administered and enforced by OSHA.

2. Specific Penalty Increases

a. Section 1902.4(c)(2)(xi)—Indices of Effectiveness

Section 18(c)(2) of the OSH Act provides that a State may assume responsibility for development and enforcement of its own occupational safety and health standards by submitting a State Plan. State Plan regulations at 29 CFR 1902.3(c)(1) and (d)(1) provide that State Plans must develop or adopt occupational safety and health standards and an enforcement program for those standards that are at least as effective as federal OSHA's standards and enforcement program. Existing § 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of effectiveness, State Plans must have effective sanctions, such as those prescribed in the OSH Act. This IFR amends § 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in § 1903.15(d), against private-sector employers who violate State standards and orders.

b. Section 1903.15—OSH Act Penalties

The penalty amounts set forth in section 17(a) to (d) and (i) of the OSH Act (29 U.S.C. 666(a) to (d) and (i)) were last updated by the Omnibus Budget Reconciliation Act of 1990 on November 5, 1990. Pub. L. 101–508. To adjust the civil penalties for Section 17(a) to (d) and (i), the Department multiplied the penalty amounts by the inflation adjustment factor for 1990 of 1.78156. None of the resulting penalty amounts exceeded the 150 percent statutory cap. Other references to penalty amounts in Part 1903 are also amended by the new penalty amounts set out in § 1903.15(d).

i. Willful or Repeated Violation of the OSH Act, 29 U.S.C 666(a)

Section 17(a) of the OSH Act, 29 U.S.C 666(a), provides that employers who willfully or repeatedly violate the requirements of section 5 of the OSH Act, any standards, rules or orders promulgated under section 6 of the OSH Act, or applicable regulations may be assessed a civil penalty of not more than $70,000 for each violation, but not less than $5,000 for each willful violation. No minimum penalty is set forth in the OSH Act for repeated violations. To adjust the existing civil money penalty for this paragraph, the Department multiplied the penalty amounts by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of $124,709 for willful and repeated violations, and a minimum penalty of $8,908 for willful violations. The updated civil monetary penalties for willful and repeated violations are set out in § 1903.15(d)(1) and (2).

ii. Serious Violation of the OSH Act of 1970, 29 U.S.C 666(b)

Section 17(b) of the OSH Act, 29 U.S.C 666(b), provides that employers who have received a citation for a serious violation of the requirements of section 5 of the OSH Act, of any standard, rule, or order promulgated under section 6 of the OSH Act, or applicable regulations may be assessed a civil penalty up to $7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts were rounded to the nearest dollar, which resulted in a maximum penalty of $12,471. The updated maximum civil monetary penalty for serious violations is set out in § 1903.15(d)(3).

iii. Other-Than-Serious Violation of the OSH Act of 1970, 29 U.S.C 666(c)

Section 17(c) of the OSH Act, 29 U.S.C 666(c), provides that employers who have received a citation for a violation of the requirements of section 5 of the OSH Act, any standard, rule or order promulgated under section 6 of the OSH Act, or applicable regulations, and such violation is determined not to be of a serious nature, may be assessed a civil penalty of up to $7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts were rounded to the nearest dollar, which resulted in a maximum penalty of $12,471 for each day during which such failure or violation continues. The updated maximum civil monetary penalty for other-than-serious violations is set out in § 1903.15(d)(4).

iv. Failure To Correct a Violation of the OSH Act of 1970, 29 U.S.C 666(d)

Section 17(d), 29 U.S.C 666(d), provides that any employer who fails to correct a violation for which a citation has been issued under section 9(a) of the OSH Act within the period permitted for the correction may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues. After applying the inflation adjustment factor, the penalty amounts are rounded to the nearest dollar, which resulted in a maximum penalty of $12,471. The updated maximum civil monetary penalty for failing to correct a violation is set out in § 1903.15(d)(5).

v. Violation of a Posting Requirement of the OSH Act of 1970, 29 U.S.C 666(i)

Section 17(i) of the OSH Act, 29 U.S.C. 666(i), provides that employers who violate any of the posting requirements, as prescribed under provisions of the OSH Act, shall be assessed a civil penalty of up to $7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts are rounded to the nearest dollar, which resulted in a maximum penalty of $12,471. The updated maximum civil monetary penalty for violations of the posting requirements is set out in § 1903.15(d)(6).

F. Employee Benefits Security Administration (29 CFR Part 2560, 2575, 2590)

1. General

This section F of the preamble addresses the civil monetary penalties administered by EBSA to enforce title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA). Paragraph 2(a) explains how the Department determined the date each civil monetary penalty was last adjusted by law or regulation (other than the Prior Inflation Adjustment Act, as amended), and Paragraph 2(b) describes the calculation of the catch-up adjustment for each ERISA civil monetary penalty through the use of a table. Paragraph 2(c) addresses the restructuring of 29 CFR part 2575 and other technical changes to the Department's regulations needed to reflect the amendments made to the Prior Inflation Adjustment Act by the Inflation Adjustment Act.

2. Specific Penalty Increases

a. Determination of Date Civil Monetary Penalty was Last Adjusted by Law or Regulation (Other Than the Prior Inflation Adjustment Act)

Section 5(b)(2)(B) of the Inflation Adjustment Act states that the initial cost-of-living adjustment (*i.e.*, catch-up adjustment) shall be applied to the "amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than the [Prior Inflation Adjustment Act]." OMB guidance clarifies that the definition of the term "law" includes regulations where the statute grants the agency authority to establish a penalty or the dollar amount of the penalty by regulation. The Department has determined that no ERISA penalty amount has been adjusted by regulation or statute (other than the Prior Inflation Adjustment Act) subsequent to the enactment of the statute that established the initial amount of the penalty.

Certain ERISA civil monetary penalties apply to violations of more than one ERISA provision. For example, new violations of ERISA were subsequently added to the civil penalty provisions of sections 502(c)(4), and 502(c)(7).[8] The addition of a violation to an existing penalty statute neither establishes nor adjusts the "amount of the civil monetary penalty" within the meaning of section 5(b)(2)(B) of the Inflation Adjustment Act. Because no ERISA civil monetary penalty amount has been adjusted by law (other than the Prior Inflation Adjustment Act) subsequent to its establishment, the enactment date of an ERISA penalty statute rather than the date a violation first becomes subject to the penalty determines both the amount of and the date from which the penalty is adjusted. For example, a failure to furnish certain multiemployer plan financial and actuarial information upon request under section 101(k) of ERISA will be subject to a penalty under ERISA section 502(c)(4) adjusted for inflation from 1993 (the year of enactment of section 502(c)(4), even though section 101(k) violations did not become subject to section 502(c)(4) until 2008.[9] This interpretation tracks the language of the statute and ensures that ERISA violations subject to the same penalty are adjusted for inflation in a consistent manner. The Department is of the view that this consistency will in turn reduce both confusion and, ultimately, the burden upon the regulated community.

---

[8] Section 502(c)(4) was enacted in 1993 by Pub. L. 103–66, 107 Stat.312. A new violation was added to section 502(c)(4) in 2006 by Pub. L. 109–280, 120 Stat. 780. Section 502(c)(7) was enacted in 2002 by Pub. L. 107–204, 116 Stat. 745. Section 502(c)(7) also was amended in 2006 by Pub. L. 109–208, 120 Stat. 780, to add a new violation.

The enactment dates of the ERISA statutes establishing the amount of the civil monetary penalties follow in Table B:

TABLE B—ENACTMENT DATES

Penalty statute: U.S.C. and ERISA citations	Law (other than prior Inflation Adjustment Act) most recently establishing amount of ERISA civil monetary penalties	Enactment date
29 U.S.C. § 1059(b)/ERISA § 209(b)	Section 209(b) of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 88 Stat. 829.	September 2, 1974.
29 U.S.C. § 1132(c)(2)/ERISA § 502(c)(2)	Section 9342(c)(2) of the Omnibus Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330.	December 22, 1987.
29 U.S.C. § 1132(c)(4)/ERISA § 502(c)(4)	Section 4301(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312.	August 10, 1993.[10]
29 U.S.C. § 1132(c)(5)/ERISA § 502(c)(5)	Section 101(e)(2) of the Health Insurance and Portability and Accountability Act of 1996, Pub. L. 104–91, 110 Stat. 1936.	August 21, 1996.
29 U.S.C. § 1132(c)(6)/ERISA § 502(c)(6)	Section 1503(c)(2)(B) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 111 Stat. 788.	August 5, 1997.
29 U.S.C. § 1132(c)(7)/ERISA § 502(c)(7)	Section 306(b)(3) of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745.	July 30, 2002.
29 U.S.C. § 1132(c)(8)/ERISA § 502(c)(8)	Section 202(b)(3) of the Pension Protection Act of 2006 (PPA), Pub. L. 109–280, 120 Stat. 780.	August 17, 2006.
29 U.S.C. § 1132(c)(9)(A)/ERISA § 502(c)(9)(A).	Section 311(b)(1)(E) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub .L. 111–3, 123 Stat. 8.	February 4, 2009.
29 U.S.C. § 1132(c)(9)(B)/ERISA § 502(c)(9)(B).	Section 311(b)(1)(E) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111–3, 123 Stat. 8.	February 4, 2009.
29 U.S.C. § 1132(c)(10)/ERISA §§ 502(c)(10)(B)(i), (C)(i), (C) (ii), and (D)(iii)(II).	Section 101(e) of the Genetic Information Nondiscrimination Act of 2008, Pub. L. 110–233, 122 Stat. 881.	May 21, 2008.
29 U.S.C. § 1132(c)(12)/ERISA § 502(c)(12).	Section 102(b)(6)(B) of the Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113–97, 128 Stat. 1101.	April 7, 2014.
29 U.S.C. § 1132(m)/ERISA § 502(m)	Section 761(a)(9)(B)(ii) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809.	December 8, 1994.
29 U.S.C. § 1185d and 42 U.S.C. § 300gg–15/ERISA § 715.	Sections 1001(5) and 1562(e) of the Patient Protection and Affordable Care Act, Pub. L. 111–148, 124 Stat. 119.	March 23, 2010.

b. Calculation of Catch-Up Inflation Adjustment

TableC shows the calculation of the catch-up adjustment. Column (1) contains the United States Code and ERISA citations for the penalty statute. Column (2) contains the dollar amount most recently established by law (other than the Prior Inflation Adjustment Act) for each ERISA civil monetary penalty along with a description of the violations subject to the penalty. Column (3) sets out the year the amount of the civil monetary penalty was most recently established by law (other than the Prior Inflation Adjustment Act) based on the date of enactment found in Table B. Column (4) sets out the factor determined by OMB to adjust for inflation from October of the corresponding year in column (3) to October 2015. Column (5) sets out the adjusted civil monetary penalty resulting from the product of the dollar amount of the civil monetary penalty set out in Column (2) multiplied by the inflation factor in column (4). Column (6) sets out the actual civil monetary penalty in effect on November 2, 2015. Column (7) sets out the maximum catch-up penalty, which is the sum of the penalty amount in Column (6) plus the maximum penalty increase of 150 percent for a total of 250 percent of the 2015 penalty.[11] Column (8) reflects the actual catch-up penalty, effective August 1, 2016, which is the lesser of the adjusted civil monetary penalty in Column (5) or the maximum civil monetary penalty in Column (7).

---

[9] Pub. L. 109–280, August 17, 2006, effective for failures occurring in plan years beginning after 2007.

[10] Initially, section 502(c)(4) applied to a failure of a group health plan administrator to furnish information to the Medicare Medicaid Coverage Data Bank under former section 101(f) of ERISA. This requirement was repealed effective October 2, 1996, by the Child Support Incentive Act of 1998, Pub. L. 105–200. The reference to section 101(f) in section 502(c)(4) was deleted and replaced with a reference to violation of the notice requirements of section 302(b)(7)(F)(vi) of ERISA by section 104(a)(2) of the Pension Funding Equity Act of 2004, Pub. L. 108–218. Sections 103(b)(2), 502(a)(2), 502(b)(2) and 902(f)(2) of the PPA deleted the reference to section 302(b)(7)(F)(vi) and replaced it with references to violations of sections 101(j), 101(k), 101(l) and section 514(e)(3) of ERISA.

[11] Section 5(2)(b)(C) of the Inflation Adjustment Act states that increase in the penalty resulting from the initial or catch-up adjustment may not be greater than 150 percent of the penalty amount on November 2, 2015. Mathematically, a maximum increase of 150 percent equals 250 percent of the penalty. See Bipartisan Budget Act of 2015 Section by Section Summary at p. 6 available at *http://docs.house.gov/meetings/RU/RU00/CPRT-114-RU00-D001.pdf.*

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1059(b)/ERISA § 209(b).	$10 per employee for failure to furnish reports (*e.g.*, pension benefit statements) to certain former participants and beneficiaries or maintain records.	1974	4.65436	$47	$11	$28	$28.
29 U.S.C. 1132(c)(2)/ERISA § 502(c)(2).	Up to $1,000 per day for each: • Failure or refusal to file annual report (Form 5500) required by ERISA § 104; and. • Failure of a multiemployer plan to certify endangered or critical status under § 305(b)(3)(C) treated as failure to file annual report.	1987	2.06278	2,063	1,100	2,750	2,063.
29 U.S.C. 1132(c)(4)/ERISA § 502(c)(4).	Up to a $1000 per day for each: • Failure to notify participants under ERISA § 101(j) of certain benefit restrictions and/or limitations arising under Internal Revenue Code section 436;. • Failure to furnish certain multiemployer plan financial and actuarial reports upon request under ERISA§ 101(k). • Failure to furnish estimate of withdrawal liability upon request under ERISA § 101(l); and • Failure to furnish automatic contribution arrangement notice under ERISA § 514(e)(3).	1993	1.63238	1,632	1,000	2,500	1,632.
29 U.S.C. 1132(c)(5)/ERISA § 502(c)(5).	Up to $1,000 per day for each failure of a multiple employer welfare arrangement to file report required by regulations issued under ERISA § 101(g).	1996	1.50245	1,502	1,100	2,750	1,502.
29 U.S.C. 1132(c)(6)/ERISA § 502(c)(6).	Up to $100 per day for failure to furnish information requested by Secretary of Labor under ERISA § 104(a)(6) but not greater than $1,000 per request.	1997	1.47177	147 not to exceed 1,472.	110 not to exceed 1,100.	275 not to exceed 2,750.	147 not to exceed 1,472.
29 U.S.C. 1132(c)(7)/ERISA § 502(c)(7).	Up to $100 per day for each failure to furnish a required blackout notice under section 101(i) of ERISA and of right to divest employer securities under section 101(m)—each statutory recipient a separate violation.	2002	1.31185	131	100	250	131.

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT—Continued

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1132(c)(8)/ERISA § 502(c)(8).	Up to $1,100 per day for failure by a plan sponsor of a multiemployer plan in endangered status to adopt a funding improvement plan or a multiemployer plan in critical status to adopt a rehabilitation plan. Penalty also applies to a plan sponsor of an endangered status plan (other than a seriously endangered plan) that fails to meet its benchmark by the end of the funding improvement period.	2006	1.17858	1,296	1,100	2,750	1,296.
29 U.S.C. 1132(c)(9)(A)/ ERISA § 502(c)(9)(A).	Up to $100 per day for each failure by an employer to inform employees of CHIP coverage opportunities under ERISA § 701(f)(3)(B)(i)(I)—each employee a separate violation.	2009	1.10020	110	100	250	110.
29 U.S.C. 1132(c)(9)(B)/ERISA § 502(c)(9) (B).	Up to $100 per day for each failure by a plan administrator to timely provide to any State information required to be disclosed under ERISA § 701(f)(3)(B)(ii), regarding coverage coordination—each participant/beneficiary a separate violation.	2009	1.10020	110	100	250	110.
29 U.S.C. 1132(c)(10)/ ERISA § 502(c)(10).	$100 per participant or beneficiary per day during noncompliance period for failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of ERISA §§ 702(a)(1)(F), (b)(3), (c) or (d); or § 701; or § 702(b)(1) with respect to genetic information. See ERISA § 502(c)(10)(B)(i).	2008	1.09819	110	100	250	110.
	Minimum penalty of $2,500 per participant or beneficiary for de minimis failures not corrected prior to notice from Secretary of Labor. See ERISA § 502(c)(10)(C)(i).	2008	1.09819	2,745	2,500	6,250	2,745.
	Minimum penalty of $15,000 per participant or beneficiary for failures which are not corrected prior to notice from Secretary of Labor and are not de minimis. See ERISA § 502(c)(10)(C)(ii).	2008	1.09819	16,473	15,000	37,500	16,473.
	$500,000 cap on unintentional failures. See ERISA § 502(c)(10)(D)(iii)(II).	2008	1.09819	549,095	500,000	1.25 million	549,095.

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT—Continued

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1132(c)(12)/ ERISA § 502(c)(12).	Up to $100 per day for failure of CSEC plan sponsor to establish or update a funding restoration plan.	2014	1.00171	100	100	250	100.
29 U.S.C. 1132(m)/ ERISA § 502(m).	Up to $10,000 per distribution prohibited by ERISA § 206(e).	1994	1.59089	15,909	10,000	25,000	15,909.
29 U.S.C. 1185d and 42 U.S.C. 300gg–15/ERISA § 715.	Up to $1000 per failure to provide Summary of Benefits Coverage under Public Health Services Act section 2715(f), as incorporated in ERISA section § 715 and 29 CFR 2590.715–2715(e).	2010	1.08745	1,087	1,000	2,500	1,087.

c. Structure

Currently, subpart A of part 2575 (Adjustment of Civil Penalties under ERISA Title I) of title 29 of the Code of Federal Regulations contains 7 sections (one general section and a separate section for the six previously adjusted penalties). Due to the large number of title I penalties adjusted for inflation by this IFR, the Department has decided to simplify the structure of subpart A of part 2575. This IFR replaces §§ 2575.100, 2575.209b–1, 2575.502c–2, 2575.502c–5, and 2575.502c–6 with new §§ 2575.1, 2575.2, and 2575.3. Section 2575.1 *In general* contains the implementing language. Section 2575.2 *Catch-up adjustments to civil monetary penalties* sets out the inflation adjustments for each ERISA penalty from establishment of the penalty amount through August 1, 2016. Section 2575.3 *Subsequent adjustments to civil monetary penalties* addresses post-2016 non-regulatory inflation adjustments.

Also, as a result of the amendments made to the Prior Inflation Adjustment Act by the Inflation Adjustment Act, the IFR also makes minor technical changes to §§ 2560.502c–2, 2560.502c–4, 2560.502c–5, 2560.502c–6, 2560.502c–7, and 2560.502c–8 of 29 CFR part 2560 and § 2590.715–2715(e) of 29 CFR part 2950.

G. Mine Safety and Health Administration (30 CFR Part 100)

1. General

This section G of the preamble addresses the civil monetary penalties administered by Mine Safety and Health Administration (MSHA) to enforce provisions of the Federal Mine Safety & Health Act of 1977 (Mine Act) (Pub. L. 91–173), as amended. Paragraphs 2(a) through (c) explain revisions to each of the civil penalties administered and enforced by MSHA.

2. Specific Penalty Adjustments

In accordance with the Inflation Adjustment Act, MSHA is adjusting its penalty amounts in §§ 100.3, 100.4, and 100.5 by calculating the catch-up adjustments for these penalties from the date of the last statute or regulation (other than the Prior Inflation Adjustment Act) that set these penalties. All MSHA penalties were last set in 2007. *See* 72 FR 13592 (Mar. 22, 2007). Subsequently (after 2007), some but not all of MSHA's penalties also were adjusted for inflation. This rule uses the 2007 final rule as the base year in calculating all of MSHA's penalty inflation adjustments, rounded to the nearest dollar. While this has resulted in different relative impacts on particular penalty amounts depending on whether any inflation adjustments occurred for that penalty since 2007, the net effect of these adjustments is to increase MSHA's penalties.

a. Section 100.3—Determination of Penalty Amount; Regular Assessment

Regularly assessed penalties are established by a penalty conversion table in part 100 that sets penalties based on the number of points a citation has been assigned. MSHA assigns points using a number of factors described in part 100, including the negligence of the operator and the gravity of the violation, among other criteria. Currently, a range of points—from 60 or fewer to 144 or more—is available; more points result in higher penalties. Penalties can range anywhere at or between the minimum penalty and the maximum penalty, based on the number of points assigned. Thus, the effect of MSHA's penalty conversion table as a whole is a function of both the amount of the minimum and maximum penalties and the rate of the progression between those two outer points. In order to fully assess how to adjust for inflation as prescribed by the statute, it is necessary to look at the interaction of all three of these factors—minimum penalty, maximum penalty, and the rate of progression between the two. As described below, we have adjusted all three elements. The result is an upward adjustment for inflation equal to 13.6% for penalties assessed overall pursuant to the penalty table (calculated using MSHA's 2015 penalty data).

Existing § 100.3(a)(1) provides that an operator of any mine in which a violation of a mandatory health or safety standard occurs or who violates any other provisions of the Mine Act shall be regularly assessed a civil penalty of not more than $70,000. To calculate the adjustment of this penalty under the Inflation Adjustment Act, MSHA multiplied $60,000, the maximum civil penalty last established by regulation (other than the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which results in a penalty amount of $68,300. The inflation-adjusted amount of $8,300 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $70,000 penalty in effect as of November 2, 2015, which is $105,000. Therefore, the maximum regular assessment for an operator of any mine in which a violation of a mandatory health or safety standard occurs or who violates any other provisions of the Mine Act is $68,300, a decrease of $1,700 from the existing penalty amount of $70,000. The new maximum penalty of $68,300 is also the maximum amount available under MSHA's penalty conversion table in § 100.3(g).

Section 100.3(g) provides the penalty conversion table used to convert total penalty points to a dollar amount. As discussed above, the points are assigned to a violation based on the criteria listed in 30 CFR part 100. The existing penalty conversion table assigns dollar amounts to penalty points that range from 60 or fewer to 144 or more. For this final rule, MSHA is using the penalty point conversion table last established by regulation (other than the Prior Inflation Adjustment Act) in 2007 (72 FR 13592)—both for purposes of determining minimum and maximum penalties and the point range between those two points. The penalty point range in the 2007 regulation used a penalty point range from 60 points or fewer to 140 points or more. For this reason, MSHA is changing the existing penalty point maximum of 144 points or more back to the maximum of 140 points or more. As described below, the result is an upward adjustment for inflation equal to 13.6 percent for penalties assessed overall (using 2015 penalty data) pursuant to the penalty conversion table.

To adjust the existing minimum penalty for inflation, MSHA multiplied $112, the minimum civil penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $127. The $15 penalty increase is less than the statutory catch-up adjustment cap of a 150 percent increase of the $112 penalty in effect as of November 2, 2015, which is $168. Therefore, the minimum penalty in the penalty conversion table is $127.

The inflation adjusted penalty conversion table in § 100.3(g) maintains the minimum penalty for 60 points or fewer at the new inflation-adjusted amount of $127. For each additional point above 60 up to 140, the existing penalty conversion table increased the dollar penalty by the same 2007 inflation adjustment factor of 1.13833 for each point. After calculating all values, MSHA rounded all values to the nearest dollar. Although the maximum penalty decreased from $70,000 to $68,3000, applying the new table to MSHA's 2015 assessment data results in a 13.6 percent increase (just slightly less than the 13.8 percent inflation adjustment for 2007).

b. Section 100.4—Unwarrantable Failure and Immediate Notification

Section 100.4(a) provides the minimum penalty for citations or orders issued under § 104(d)(1) of the Mine Act at $2,000. To adjust the existing minimum penalty for inflation, MSHA multiplied $2,000, the minimum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $2,277. The penalty increase of $277 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $2,000 penalty in effect as of November 2, 2015, which is $3,000. Therefore, the minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act is $2,277.

Section 100.4(b) states that the minimum penalty for any order issued under section 104(d)(2) of the Mine Act is $4,000. To adjust the existing minimum penalty for inflation, MSHA multiplied $4,000, the minimum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $4,553. The penalty increase of $553 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $4,000 penalty in effect as of November 2, 2015, which is $6,000. Therefore, the minimum penalty for any citation or order issued under section 104(d)(2) of the Mine Act is $4,553.

Section 100.4(c) states that the penalty for failure to provide timely notification of a death or entrapment of a miner or miners at a mine to the Secretary of Labor under section 103(j) of the Mine Act, as amended, will not be less than a penalty of $5,000 and not more than a penalty of $65,000. To adjust the existing minimum penalty, MSHA multiplied $5,000, the minimum civil penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $5,692. The penalty increase of $692 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $5,000 penalty in effect as of November 2, 2015, which is $7,500. Therefore, the minimum penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act is $5,692. To adjust the existing maximum penalty, MSHA multiplied $60,000, the maximum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $68,300. The penalty increase of $8,300 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $65,000 penalty in effect as of November 2, 2015, which is $97,500. Therefore, the maximum penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act is $68,300.

c. Section 100.5—Determination of Penalty Amount; Special Assessment

Section 100.5(c) addresses penalties that may be assessed daily to an operator who fails to correct a violation for which a citation or order has been issued under Section 104(a) of the Mine Act. The existing maximum daily penalty assessment is $7,500.

To adjust the penalty for inflation, MSHA multiplied $6,500, the penalty amount last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $7,399. The inflation-adjusted amount of $899 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $7,500 penalty in effect as of November 2, 2015, which is $11,250. Therefore, the daily penalty assessed an operator who fails to correct a violation for which a citation or order has been issued under Section sec. 104(a) of the Mine Act is $7,399, a decrease of $101 from the existing penalty amount of $7,500.

Section 100.5(d) addresses penalties for miners who violate mandatory safety standards relating to smoking and smoking materials underground. The existing maximum smoking penalty is $375. To adjust the penalty for inflation, MSHA multiplied the penalty $275, the maximum smoking penalty amount last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $313. The inflation-adjusted amount of $38 is less than the statutory catch-up adjustment cap of a 150 percent increase of the $375 penalty in effect as of November 2, 2015, which is $563. Therefore, the penalty assessed for a miner who violates mandatory safety standards relating to smoking and smoking materials underground is $313, a decrease of $62 from the existing penalty amount of $375.

Section 100.5(e) provides a maximum penalty for violations that are deemed to be flagrant under 110(b)(2) of the Mine Act. The existing maximum penalty is $242,000. To adjust the penalty for inflation, MSHA multiplied $220,000, the penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of $250,433. The penalty increase of $8,433 is less than the statutory catch-up adjustment increase cap of a 150 percent increase of the $242,000 penalty in effect as of November 2, 2015, which is $363,000. Therefore, the maximum penalty for violations that are deemed flagrant under sec. 110(b) of the Mine Act is $250,433.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule does not require any collection of information.

V. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a "significant regulatory action" is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. The IFR's increases in the maximum civil money penalties that agencies are authorized to assess for violations of laws they administer are required by the statutorily-mandated provisions of the Inflation Adjustment Act, which was enacted by Congress as part of the Bipartisan Budget Act of 2015. This IFR is a "significant" regulatory action because the Department's analysis shows that it could potentially have an annual effect on the economy of more than $100 million.

The Department considered two potential effects of the increased penalties mandated by the Inflation Adjustment Act: (1) Increased transfers from employers and others who violate the law (and therefore pay penalties) to the government; and (2) the benefits to workers, retirees, and responsible employers and others of increased penalties that will encourage greater compliance with the laws that the Department enforces. Each of these effects is discussed in turn.

Transfers to Government

The Department estimated the increased transfers from employers and others who violate the law to the government by conducting a provision-by-provision analysis of each of the penalties affected by the Inflation Adjustment Act. The Department considered the total dollar amount of penalties collected under each affected penalty over the immediately preceding three complete fiscal years (2013, 2014, and 2015) to calculate the average total penalties collected under each statute.[12] Then the Department projected how the amount collected under each statute would increase if it did so in proportion to the percentage increase of the maximum penalty for that statute.[13] The result—approximately $140 million in additional transfers from the regulated community to the government each year—is enumerated by agency in Table D.

TABLE D—PROJECTED PENALTIES

[Inflation Adjustment Act: Total penalties by agency, 3-year average (2013–2015)]

Agency	Dollar Amount Collected ($FY2015)		
	Total (current penalties)	Total (projected penalties)	Numeric change
EBSA	$17,667,363	$33,134,336	$15,466,973
MSHA	73,112,904	82,812,155	9,699,251
OSHA (federal)	141,969,042	252,927,499	110,958,457
OWCP	19,674	45,470	25,797
WHD/ETA/OSEC	6,894,835	10,541,217	3,646,383
Total	239,663,817	379,460,677	139,796,860

The Department notes that this amount could be an overestimate of transfers given that its collections are likely to be lower than projected under the new penalties established by the Inflation Adjustment Act. First, it does not account for a key factor underpinning long-established deterrence principles: That rational actors are *less likely* to commit violations when faced with higher penalties.[14] It is therefore conceivable

---

[12] The total penalties collected in fiscal years 2013 and 2014 were adjusted for inflation using the CPI–U to put them into fiscal year 2015 dollars previous to the calculation of three-year collection averages.

[13] Exceptions were made to this method with respect to three provisions of the Mine Act. To calculate projected total penalty collections under sections 104(d)(1) and 104(d)(2), the three-year averages of penalties collected under each provision between fiscal years 2013 and 2015 were multiplied by the percentage increases in the minimum required penalties for each statute. To calculate projected total penalties collected using MSHA's penalty conversion table, MSHA used the detailed assessment data from fiscal years 2013, 2014, and 2015 to estimate total assessed dollar values for each year using both the existing and new conversion tables. The total dollar values produced using the new inflation-adjusted conversion table were then compared to the dollar values produced using the existing conversion table. The resulting annual percent changes for fiscal years 2013, 2014, and 2015 were 13.5 percent, 13.5 percent, and 13.6 percent respectively. These annual percentages were then multiplied by the annual dollar collection totals for each fiscal year to obtain projected collections by fiscal year, and a three-year average was then taken to produce a single projected collection total.

[14] *See generally* Gary S. Becker, Essays in the Economics of Crime and Punishment, Ch. 1 (1974), *available at http://www.nber.org/chapters/c3625.pdf.* These concepts are also reflected in the

Continued

that the increase in penalties collected would not be proportional to the increase in penalties that might be assessed by an agency, but would instead be less.[15] In addition, this estimate also assumes that the Department's collections will continue at approximately the same rate each year despite increased penalties. Together, these factors suggest that the amount of the transfers from the regulated community to the government is likely to be lower than the $140 million projected above.

OSHA's penalty increases under the Inflation Adjustment Act will necessitate an increase to the maximum and minimum penalty amounts required by states that administer their own occupational safety and health programs as well. Section 18 of the OSH Act (29 U.S.C. 667) requires states with OSHA-approved State Plans covering private-sector and state and local government employees to have standards and an enforcement program that are at least as effective as Federal OSHA's standards and enforcement program. Twenty-two (22) States and U.S. territories have State Plans that cover private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The existing regulation at 29 CFR 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of effectiveness, State Plans must have effective sanctions, such as those prescribed in the OSH Act. Similarly, 29 CFR 1902.37(b)(12) requires State Plans with final approval to propose penalties in a manner at least as effective as under the federal program. This IFR amends 29 CFR 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in 29 CFR 1903.15(d).

OSHA will require State Plans to increase their penalties to reflect the federal penalties increases at the state levels in order to maintain this "at least as effective" status. If every State Plan state increases its own penalties in line with the federal increases, using the same methodology outlined above, the additional transfer from employers to OSHA State Plans would be $57.1 million, as enumerated in Table E.

TABLE E—PROJECTED PENALTIES

[Inflation Adjustment Act: OSHA state plans, 3-Year average (2013–2015)]

	Dollar amount collected ($FY2015)		
	Total (current penalties)	Total (projected penalties)	Numeric change
OSHA State Plans	$73,121,821	$130,271,603	$57,149,782

Benefits to Workers, Retirees, and Responsible Employers

Meanwhile, the Inflation Adjustment Act's penalty increase will have significant benefits for workers, retirees, and responsible employers and others in the regulated community. While most employers play by the rules, there are too many cases where workers are cheated out of their hard-earned wages or retirement benefits or forced to endure an unsafe workplace. By deterring violations and promoting compliance, more workers and retirees will benefit from the core employment law protections that the Department administers and enforces. Furthermore, responsible employers and others who remain in compliance with the Department's laws will face less competition from the minority of employers who make a calculated decision to save money by eschewing compliance with these laws.[16] Those who follow the law will essentially benefit from a more level playing field when competing with those who do not. The Department has been unable to quantify these significant benefits.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), and that are likely to have a significant economic impact on a substantial number of small entities. This IFR is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue an interim final rule. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this IFR. Accordingly, the Department is not required to either certify that the IFR would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Inflation Adjustment Act. 28 U.S.C. 2461 Note, Sec. 2(a)(1) ("[T]he power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations[.]"); 2(b)(2) ("The purpose of this Act is to establish a mechanism that shall . . . maintain the deterrent effect of civil monetary penalties and promote compliance with the law."); S. 535: Hearing before Subcomm. Legis & Nat'l Sec. of the H. Comm. Gov't Ops., 101st Cong. 3 (1990) (hereinafter 1990 Hearing) (statement of Rep. Conyers) ("At the heart . . . of regulatory statutes . . . are the monetary fines intended to both penalize and deter practices prohibited by these laws."); *Id.* at 70 (statement of HHS Inspector Gen. Kusserow) ("We have found that civil monetary penalties are a very effective enforcement tool [and] have also seen them become a very good deterrent against fraud."). Research suggests that the same concepts apply in labor law violations as well. *See, e.g.,* Orley Ashenfelter & Robert S. Smith, Compliance with the Minimum Wage Law, 87 Journal of Political Economy 333 (1979), *available at http://www.jstor.org/stable/1832090?seq=1#page_scan_tab_contents.*

[15] In addition, it is important to note that the IFR does not revoke existing provisions of the laws above that provide the Department with discretion in determining the appropriate civil penalty amounts below any particular maximum penalty. Nor does the IFR amend any requirements in these laws that the Department consider mitigating factors in making such determinations, such as the severity of the violation, the number of workers affected by the violation, the entity's compliance history, or the size of the entity.

[16] Entities that violate the basic labor protections described above such that they are subject to civil penalties have often benefitted from their non-compliance with such requirements over a length of time before being investigated, assessed and required to pay penalties for their illegal activities. As noted above, the rule only adjusts the authorized levels of civil money penalties to account for inflation over time. Of course, to the extent that civil penalties increase, there will be increased revenues to the government from entities that have been found to have violated the law. *See* 1990 Hearing at 15 (discussing the importance of the government fully understanding how many civil monetary penalties are assessed and collected and discussing the benefit to taxpayers of increased revenue for government).

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

The Department estimates that the IFR may result in transfers of up to $140 million per year, and acknowledges that this IFR may yield effects that make it subject to UMRA requirements. Therefore, the Department carried out the requisite cost-benefit analysis in the section discussing Executive Orders 12866 and 13563 above.

B. Executive Order 13132: Federalism

As described above, Section 18 of the OSH Act (29 U.S.C. 667) requires OSHA-approved State Plans to have standards and an enforcement program that are at least as effective as federal OSHA's standards and enforcement program. The existing regulation at 29 CFR 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of effectiveness, State Plans must have effective sanctions, such as those prescribed in the OSH Act. Similarly, 29 CFR 1902.37(b)(12) requires State Plans with final approval to propose penalties in a manner at least as effective as under the federal program. This IFR amends 29 CFR 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in 29 CFR 1903.15(d).

In accordance with Part 1953, State Plans are required to adopt penalty changes that are at least as effective as federal OSHA, within six months after publication of the Department's IFR amending OSHA's penalties. Thereafter, OSHA penalties will be increased by the cost-of-living adjustment for every subsequent year by January 15th. State Plans will also be required to increase their penalties regularly in the future to maintain at least as effective penalty levels.

State Plans are not required to impose monetary penalties on state and local government employers. *See* § 1956.11(c)(2)(x). Five (5) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one (21) states and one U.S. territory have State Plans that cover both private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. These states must increase their penalties for private-sector employers.

Other than as listed above, this IFR does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. Executive Order 13175: Indian Tribal Governments

This IFR does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

D. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This IFR will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This IFR will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Environmental Impact Assessment

A review of this Final Rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the Final Rule will not have a significant impact on the quality of the human environment. As a result, there is no corresponding environmental assessment or an environmental impact statement.

G. Executive Order 13211: Energy Supply

This IFR has been reviewed for its impact on the supply, distribution, and use of energy because it applies, in part, to the coal mining and uranium industries. MSHA has concluded that the adjustment of civil monetary penalties to keep pace with inflation and thus maintain the incentive for operators to maintain safe and healthful workplaces is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This IFR has not been identified to have other impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

H. Executive Order 12630: Constitutionally Protected Property Rights

This IFR will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

I. Executive Order 12988: Civil Justice Reform Analysis

This IFR was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This IFR was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Department has determined that this IFR meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects

20 CFR Part 655

Immigration, Penalties, Labor.

20 CFR Part 702

Administrative practice and procedure, Longshore and harbor workers, Penalties, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Coal miners, Penalties, Reporting and recordkeeping requirements.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 530

Administrative practice and procedure, Clothing, Homeworkers, Indians—arts and crafts, Penalties, Reporting and recordkeeping requirements, Surety bonds, Watches and jewelry.

29 CFR Part 570

Administrative practice and procedure, Agriculture, Child labor, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

29 CFR Parts 1902 and 1903

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Penalties.

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Penalties, Pensions, Reporting and recordkeeping

29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Health care, Penalties, Pensions

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Penalties, Pensions, Reporting and recordkeeping

30 CFR Part 100

Mine safety and health, Penalties.

41 CFR Part 50–201

Child labor, Government procurement, Minimum wages, Occupational safety and health, Reporting and recordkeeping requirements.

Department of Labor

Employment and Training Administration

For the reasons stated in the preamble, 20 CFR part 655 is amended as follows:

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. Revise the general authority citation for part 655 to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.;* sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i). Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.;* and 8 CFR 214.2(h)(4)(i). Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.;* and 8 CFR 214.2(h)(4)(i) ; and 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), Pub. L. 114–74 at § 701. Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 et seq; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.;* and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note). Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 et seq; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.;* sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts J and K issued under 29 U.S.C. 49 *et seq.;* and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note). Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

■ 2. Amend § 655.620 by revising paragraph (a) to read as follows:

§ 655.620 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $8,908 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

* * * * *

■ 3. Amend § 655.801 by revising paragraph (b) to read as follows:

§ 655.801 What protection do employees have from retaliation?

* * * * *

(b) It shall be a violation of this section for any employer to engage in the conduct described in paragraph (a) of this section. Such conduct shall be subject to the penalties prescribed by sections 212(n)(2)(C)(ii) or (t)(3)(C)(ii) of the INA and § 655.810(b)(2), *i.e.,* a fine of up to $7,251, disqualification from filing petitions under section 204 or section 214(c) of the INA for at least two years, and such further administrative remedies as the Administrator considers appropriate.

* * * * *

■ 4. Amend § 655.810 by revising paragraphs (b)(1), (2) and (3) introductory text, to read as follows:

§ 655.810 What remedies may be ordered if violations are found?

* * * * *

(b) * * *

(1) An amount not to exceed $1,782 per violation for:

* * * * *

(2) An amount not to exceed $7,251 per violation for:

* * * * *

(3) An amount not to exceed $50,758 per violation where an employer (whether or not the employer is an H–1B-dependent employer or willful violator) displaced a U.S. worker employed by the employer in the period beginning 90 days before and ending 90 days after the filing of an H–1B petition

in conjunction with any of the following violations:

* * * * *

Department of Labor

Office of Workers' Compensation Programs

For the reasons stated in the preamble, 20 CFR parts 702, 725, and 726 are amended as follows:

Title 20—Employees' Benefits

PART 702—ADMINISTRATION AND PROCEDURE

■ 5. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec.701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 6. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $22,587 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after August 1, 2016. The district director has the authority and responsibility for assessing a civil penalty under this section.

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of $275 for any violation for which penalties are assessed after August 1, 2016. The district director has the authority and responsibility for assessing a civil penalty under this section.

■ 8. In § 702.271, revise paragraph (a)(2) to read as follows:

§ 702.271 Discrimination; against employees who bring proceedings, prohibition and penalty.

(a)(1) * * *

(2) Any employer who violates this section, and has penalties assessed for such violation after August 1, 2016, shall be liable for a penalty of not less than $2,259 or more than $11,293 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless the employee has ceased to be qualified to perform the duties of employment.

* * * * *

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 9. The authority citation for part 725 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 10. In § 725.621, revise paragraph (d) to read as follows:

§ 725.621 Reports.

* * * * *

(d) Any employer who fails or refuses to file any report required of such employer under this section, and has penalties assessed for such failure or refusal after August 1, 2016, shall be subject to a civil penalty not to exceed $1,375 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in subpart D of part 726 of this subchapter, as appropriate.

* * * * *

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 11. The authority citation for part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 901 *et seq.*, 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 12. Revise § 726.300 to read as follows.

§ 726.300 Purpose and scope.

Any operator which is required to secure the payment of benefits under section 423 of the Act and § 726.4 and which fails to secure such benefits, shall be subject to a civil penalty of not more than $1,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for each day during which such failure occurs. If the operator is a corporation, the president, secretary, and treasurer of the operator shall also be severally liable for the penalty based on the operator's failure to secure the payment of benefits. This subpart defines those terms necessary for administration of the civil money penalty provisions, describes the criteria for determining the amount of penalty to be assessed, and sets forth applicable procedures for the assessment and contest of penalties.

■ 13. In § 726.302, revise paragraphs (c)(2)(i), (4), and (5) and add (c)(6) to read as follows:

§ 726.302 Determination of penalty.

* * * * *

(c)(1) * * *

(2)(i) The daily base penalty amount shall be determined based on the number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on each day of the period defined by this section.

For penalties assessed after August 1, 2016, the daily base penalty amount shall be computed as follows:

Employees	Penalty (per day)
Less than 25	$134
25–50	268
51–100	402
More than 100	535

* * * * *

(4) Commencing with the 11th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, for penalties assessed after August 1, 2016, the daily base penalty amounts set forth in paragraph (c)(2)(i) shall be increased by $134.

(5) In any case in which the operator, or any of its principals, or an entity in which the operator's president, secretary, or treasurer were employed, has been the subject of a previous penalty assessment under this part, for penalties assessed after August 1, 2016, the daily base penalty amounts shall be increased by $402.

(6) The maximum daily base penalty amount applicable to any violation of § 726.4 for which penalties are assessed after August 1, 2016, shall be $2,750.

* * * * *

Department of Labor

Office of the Secretary of Labor

For the reasons stated in the preamble, 29 CFR part 5 is amended as follows:

Title 29—Labor

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

■ 14. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.;* 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.;* and the laws listed in 5.1(a) of this part; Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 15. Amend § 5.5 by revising the last sentence of paragraph (b)(2) to read as follows:

§ 5.5 Contract provisions and related matters.

* * * * *

(b) * * *

(2) * * * Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

* * * * *

■ 16. Amend § 5.8 by revising the second sentence in paragraph (a) to read as follows:

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) * * * In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $25 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages.

* * * * *

Department of Labor

Wage and Hour Division

For the reasons stated in the preamble, 29 CFR parts 500, 501, 530, 570, 578, 579, 801, and 825 are amended as follows:

Title 29—Labor

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 17. The authority citation for part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

■ 18. Amend § 500.1 by revising the second sentence in paragraph (e) to read as follows:

§ 500.1 Purpose and scope.

* * * * *

(e) * * * As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than $2,355 for each violation, to seek a temporary or permanent restraining order in a U.S. District Court, and to seek the imposition of criminal penalties on persons who willfully and knowingly violate the Act or any regulation under the Act.* * *

* * * * *

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 19. Revise the authority citation for part 501 to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 20. Amend § 501.19 by revising paragraphs (c) introductory text, (c)(1), (2), (4), (d), (e), and (f) to read as follows:

§ 501.19 Civil money penalty assessment.

* * * * *

(c) A civil money penalty for each violation of the work contract or a requirement of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part will not exceed $1,631 per violation, with the following exceptions:

(1) A civil money penalty for each willful violation of the work contract, or of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or for each act of discrimination prohibited by § 501.4 shall not exceed $5,491;

(2) A civil money penalty for a violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker shall not exceed $54,373 per worker;

* * * * *

(4) A civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker, shall not exceed $108,745 per worker.

(d) A civil money penalty for failure to cooperate with a WHD investigation shall not exceed $5,491 per investigation.

(e) A civil money penalty for laying off or displacing any U.S. worker employed in work or activities that are encompassed by the approved *Application for Temporary Employment Certification* for H–2A workers in the area of intended employment either within 60 days preceding the date of need or during the validity period of the job order, including any approved extension thereof, other than for a lawful, job-related reason, shall not exceed $16,312 per violation per worker.

(f) A civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, shall not exceed $16,312 per violation per worker.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 21. The authority citation for part 503 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 22. Revise § 530.302 to read as follows:

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed $989 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$20–198	$198–396	$396–989
Monetary violations	20–198	198–396	
Employment of homeworkers without a certificate	....	198–396	396–989
Other violations of statutes, regulations or employer assurances	20–198	198–396	396–989

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

■ 23. The authority citation for Subpart G of part 570 is revised to read as follows:

Authority: 52 Stat. 1060–1069, as amended; 29 U.S.C. 201–219; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

■ 24. Amend § 570.140 by revising paragraphs (b)(1) and (2) to read as follows:

§ 570.140 General.

* * * * *

(b) * * *

(1) $12,080 for each employee who was the subject of such a violation; or

(2) $54,910 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is repeated or willful.

* * * * *

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 25. The authority citation for part 578 is revised to read as follows:

Authority: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373, and Pub. L. 114–74, 129 Stat 584.

■ 26. Amend § 578.1 by revising the first two sentences to read as follows:

§ 578.1 What does this part cover?

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed $1,000 for each such violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74, section 701), requires that inflationary adjustments be annually made in these civil money penalties according to a specified cost-of-living formula. * * *

■ 27. Amend § 578.3 by revising paragraph (a) to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a) A penalty of up to $1,894 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalty will be determined by applying the criteria in § 578.4.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 28. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–7, 129 Stat 584.

■ 29. Amend § 579.1 by revising paragraphs (a)(1)(i)(A), (B), (2) and (b) to read as follows:

§ 579.1 Purpose and scope.

(a) * * *

(1)(i) * * *

(A) $12,080 for each employee who was the subject of such a violation; or

(B) $54,910 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

* * * * *

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed $1,894 for each such violation.

* * * * *

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74, section 701), requires that Federal agencies annually adjust their civil money penalties for inflation according to a specified cost-of-living formula.

* * * * *

■ 30. Amend § 579.5 by revising paragraph (a) to read as follows:

§ 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section.

* * * * *

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 31. The authority citation for part 801 is revised to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 32. Amend § 801.42 by revising paragraph (a) introductory text to read as follows:

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed $19,787 for any violation may be assessed against any employer for:

* * * * *

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 33. The authority citation for part 825 is revised to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 34. Amend § 825.300 by revising the last sentence in paragraph (a)(1) to read as follows:

§ 825.300 Employer notice requirements.

(a) * * *

(1) * * * An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wage and Hour Division not to exceed $163 for each separate offense.

* * * * *

Department of Labor

Public Contracts

For the reasons stated in the preamble 41 CFR part 50–201 is amended as follows:

Title 41—Public Contracts and Property Management

PART 50–201—GENERAL REGULATIONS

■ 35. The authority citation for part 50–201 is revised to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 36. Amend § 50–201.3 by revising the first sentence of paragraph (e) to read as follows:

§ 50–201.3 Insertion of stipulations.

* * * * *

(e) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $25 per day for each person under 16 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. * * *

* * * * *

Department of Labor

Occupational Safety and Health Administration

For the reasons set out in the preamble, 29 CFR parts 1902 and 1903 are amended as follows:

Title 29—Labor

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

■ 37. The authority citation for part 1902 is revised to read as follows:

Authority: Secs. 8 and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart B—Criteria for State Plans

■ 38. Amend § 1902.4 by revising paragraph (c)(2)(xi) to read as follows:

§ 1902.4 Indices of effectiveness.

* * * * *

(c) * * *

(2) * * *

(xi) Provides effective sanctions against employers who violate State standards and orders, such as those set forth in the Act, and in 29 CFR 1903.15(d).

* * * * *

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 39. The authority citation for part 1903 is revised to read as follows:

Authority: Secs. 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 40. Amend § 1903.2 by revising paragraph (d) to read as follows:

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.

* * * * *

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of § 1903.15(d).

■ 41. Amend § 1903.6 by revising paragraph (b) to read as follows:

§ 1903.6 Advance notice of inspections.

* * * * *

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See § 1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty in accordance with

§ 1903.15(d)(4). Advance notice in any of the situations described in paragraph (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

* * * * *

■ 42. Amend § 1903.15 by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 1903.15 Proposed penalties.

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty in accordance with paragraph (d) of this section, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act and paragraph (d) of this section.

* * * * *

(d) *Adjusted civil monetary penalties.* The adjusted civil penalties for penalties proposed on or after August 1, 2016 are as follows:

(1) *Willful violation.* The penalty per willful violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than $8,908 and shall not exceed $124,709.

(2) *Repeated violation.* The penalty per repeated violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed $124,709.

(3) *Serious violation.* The penalty for a serious violation under section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed $12,471.

(4) *Other-than-serious violation.* The penalty for an other-than-serious violation under section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed $12,471.

(5) *Failure to correct violation.* The penalty for a failure to correct a violation under section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed $12,471 per day.

(6) *Posting requirement violation.* The penalty for a posting requirement violation under section 17(i) of the Act, 29 U.S.C. 666(i), shall not exceed $12,471.

■ 43. Amend § 1903.16 by revising paragraph (d) to read as follows:

§ 1903.16 Posting of citations.

* * * * *

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with § 1903.15(d).

■ 44. Amend § 1903.18 by revising paragraph (a) to read as follows:

§ 1903.18 Failure to correct a violation for which a citation has been issued.

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall, if appropriate, consult with the Regional Solicitor, and he shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of such failure and of the additional penalty proposed under § 1903.15(d)(5) by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

* * * * *

Department of Labor

Employee Benefits Security Administration

For the reasons stated in the preamble, 29 CFR parts 2560, 2575, 2590 are amended as follows:

Title 29—Labor

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 45. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1002, 1132, 1133, 1134, 1135, and Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012). Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373, and section 701 of Pub. L. 114–74, 129 Stat. 584.

§ 2560.502c–2 [Amended]

■ 46. Amend § 2560.502c–2(b)(1) by removing the parenthetical phrase "(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)" and adding in its place "(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)."

§ 2560–502c–4 [Amended]

■ 47. Amend § 2560.502c–4(b)(1) by removing the parenthetical phrase "(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)" and adding in its place "(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)."

■ 48. Amend § 2560.502c–5 by revising the second sentence of paragraph (b)(1) to read as follows:

§ 2560.502c–5 Civil penalties under section 502c–5.

* * * * *

(b) * * *

(1) * * * However, the amount assessed under section 502(c)(5) or the Act shall not exceed $1,000 a day (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g) of the Act and 29 CFR 2520.101–2, as determined by the Secretary, is filed.

* * * * *

§ 2560.502c–6 [Amended]

■ 49. Amend § 2560.502c–6(b)(1) by removing the parenthetical phrase "(or such other maximum amounts as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)" and adding in its place "(such amounts to be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)."

§ 2560.502c–7 [Amended]

■ 50. Amend § 2560.502c–7(b)(1) by removing the parenthetical phrase "(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)" and adding in its place "(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).''

§ 2560.502c–8 [Amended]

■ 51. Amend § 2560.502c–8(b)(1) by removing the parenthetical phrase ''(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)'' and adding in its place ''(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).''

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

■ 52. The authority citation for subpart A of 29 CFR part 2575 is revised to read as follows:

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373, and section 701 of Pub. L. 114–74, 129 Stat. 584; 29 U.S.C 1059(b), 1132(c), 1135 and 1185d; and Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 53. Add §§ 2575.1, 2575.2 and 2575.3 to read as follows:

§ 2575.1 In general.

In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104–410, 104 Stat. 890, as amended by the section 31001(s) of the Debt Collection Improvement Act of 1996, Pub. L. 104–34, 110 Stat. 1321–373, and section 701 of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584, (collectively the Inflation Adjustment Act), the applicable civil monetary penalties of title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), under the jurisdiction of the U.S. Department of Labor (Department) and listed in 29 CFR 2575.2 are adjusted as set forth in this subpart, effective as of the relevant dates specified in § 2575.2.

§ 2575.2 Catch-up adjustments to civil monetary penalties.

The civil monetary penalties set forth in paragraphs (a) through (m) of this section are adjusted for inflation as required by section 4(b)(1) of the Inflation Adjustment Act and 29 CFR 2575.1 as follows:

(a) The civil monetary penalty of $10 for each employee established by section 209(b) of ERISA, is adjusted to $11 for violations occurring after July 29, 1997, for which a penalty is assessed before August 1, 2016 and to $28 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(b) The civil monetary penalty of up to $1,000 established by Section 502(c)(2) of ERISA is adjusted to $1,100 for violations occurring after July 29, 1997, for which a penalty is assessed before August 1, 2016, and to $2,063 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(c) The civil monetary penalty of up to $1,000 established by section 502(c)(4) of ERISA is adjusted to $1,632 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(d) The civil monetary penalty of up to $1,000 established by Section 502(c)(5) of ERISA is adjusted to $1,100 for violations occurring after March 24, 2003, for which a penalty is assessed before August 1, 2016, and to $1,502 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(e) The civil monetary penalty of up to $100 not to exceed $1,000 per request, established by section 502(c)(6) of ERISA, is adjusted to $110 not to exceed $1,100 per request for violations occurring after March 24, 2003, for which a penalty is assessed before August 1, 2016, and to $147 not to exceed $1,472 per request for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(f) The civil monetary penalty of up to $100 established by section 502(c)(7) of ERISA is adjusted to $131 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(g) The civil monetary penalty of up to $1,100 established by section 502(c)(8) of ERISA is adjusted to $1,296 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(h) The civil monetary penalty of up to $100 established by section 502(c)(9)(A) of ERISA is adjusted to $110 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(i) The civil monetary penalty of up to $100 established by section 502(c)(9)(B) of ERISA is adjusted to $110 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(j) The civil monetary penalties established by section 502(c)(10) of ERISA are adjusted in accordance with paragraphs (j)(1) through (4) of this section:

(1) The $100 civil monetary penalty of section 502(c)(10)(B)(i) of ERISA is adjusted to $110 to for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3;

(2) The $2,500 minimum civil monetary penalty of section 502(c)(10)(C)(i) of ERISA for de minimis uncorrected violations is adjusted to $2,745 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3;

(3) The $15,000 minimum civil monetary penalty of section 502(c)(10)(C)(ii) of ERISA for uncorrected violations that are not de minimis is adjusted to $16,473 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3; and

(4) The $500,000 maximum civil monetary penalty for unintentional failures set in Section 502 (c)(10)(D)(iii)(II) of ERISA is adjusted to $549,095, for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(k) The civil monetary penalty of up to $100 established by section 502(c)(12) of ERISA remains at $100 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(l) The maximum civil monetary penalty of $10,000 established by section 502(m) of ERISA is adjusted to $15,909 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(m) The civil monetary penalty of not more than $1,000, established by Public Health Services Act section 2715(f) and incorporated into ERISA by section 715 of ERISA, is adjusted to $1,087 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

§ 2575.3 Subsequent adjustments to civil monetary penalties.

No later than January 15, starting in 2017, and each subsequent year, the Secretary shall adjust for inflation the civil monetary penalties described in § 2575.2 and any future civil monetary penalties enforceable by the Secretary under title I of ERISA and publish such annual adjustments in the **Federal Register** notwithstanding section 553 of the Administrative Procedures Act. Future penalties or adjustments to the amount of the penalty that are enacted by statute or regulation will not be adjusted for inflation in the first year those penalty levels take effect. Annual inflation adjustments shall apply to penalties assessed after the later of January 15 or the date notice of the annual inflation adjustment is published in the **Federal Register**.

* * * * *

§§ 2575.100, 2575.209b–1, 2575.502c–2, 2575.502c–5, and 2575.502c–6 [Removed]

■ 54. Remove §§ 2575.100, 2575.209b–1, 2575.502c–2, 2575.502c–5, and 2575.502c–6.

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 55. The authority citation for part 2590 is revised to read as follows:

Authority: Secs. 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373, and section 701 of Pub. L. 114–74, 129 Stat. 584; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 56. Amend § 2590.715–2715 by revising the first sentence of paragraph (e) to read as follows:

§ 2590.715–2715 Summary of benefits and coverage and uniform glossary.

* * * * *

(e) *Failure to provide.* A group health plan that willfully fails to provide information under this section to a participant or beneficiary is subject to a fine of not more than $1,000 (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each such failure. * * *

Department of Labor

Mine Safety and Health Administration

For the reasons stated in the preamble, 30 CFR part 100 is amended as follows:

Title 30—Mineral Resources

PART 100—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

■ 57. The authority citation for part 100 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 815, 820, 957; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701;

■ 58. Amend § 100.3 by:

■ a. Revising the first sentence of paragraph (a)(1); and

■ b. Revising Table XIV in paragraph (g).

The revisions read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) * * *

(1) Except as provided in § 100.5(e), the operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, as amended, shall be assessed a civil penalty of not more than $68,300. * * *

* * * * *

(g) * * *

TABLE XIV—PENALTY CONVERSION TABLE

Points	Penalty ($)
60 or fewer	127
61	138
62	149
63	162
64	175
65	190
66	206
67	223
68	241
69	262
70	283
71	307
72	334
73	361
74	390
75	423
76	459
77	496
78	538
79	583
80	632
81	684
82	741
83	803
84	870
85	943
86	1,021
87	1,105
88	1,198
89	1,298
90	1,406
91	1,522
92	1,649
93	1,786
94	1,935
95	2,097
96	2,271
97	2,460
98	2,665
99	2,887
100	3,128
101	3,388
102	3,670
103	3,976
104	4,307
105	4,666
106	5,054
107	5,475
108	5,932
109	6,426
110	6,961
111	7,540
112	8,169
113	8,849
114	9,586
115	10,384
116	11,249
117	12,186
118	13,201
119	14,301
120	15,492
121	16,782
122	18,180
123	19,694
124	21,335
125	23,110
126	25,035
127	27,121
128	29,380
129	31,827
130	34,478
131	37,349
132	40,460
133	43,829
134	47,325
135	50,821
136	54,317
137	57,812
138	61,308
139	64,804
140 or more	68,300

* * * * *

■ 59. Amend § 100.4 by:

■ a. Revising paragraphs (a) and (b); and

■ b. Revising introductory paragraph (c).

The revisions read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be $2,277.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be $4,553.

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,692 and not more than $68,300 for the following accidents:

* * * * *

■ 60. Amend § 100.5 by revising paragraphs (c), (d), and (e) to read as follows:

§ 100.5 Determination of penalty amount; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $7,399 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty of not more than $313 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than $250,433. For purposes of this section, a flagrant violation means "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury."

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS

Agency	Law	Name/ Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) ($)	Max penalty (non IAA) ($)	11/15 Min ($)	11/15 Max ($)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(A)	2007	72 FR 13592		60,000		70,000		68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(G)	2007	72 FR 13592	112	60,000	112	70,000	127	68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum Penalty for any order issued under 104(d)(1) of the Mine Act.	30 CFR 100.4(a)	2007	72 FR 13592	2,000		2,000		2,277	
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum penalty for any order issued under 104(d)(2) of the Mine Act.	30 CFR 100.4(b)	2007	72 FR 13592	4,000		4,000		4,553	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification under 103(j) of the Mine Act.	39 CFR 100.4(c)	2007	72 FR 13592	5,000	60,000	5,000	65,000	5,692	68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act.	30 CFR 100.5(C)	2007	72 FR 13592		6,500		7,500		7,399.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(D)	2007	72 FR 13592		275		375		313.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)	2007	72 FR 13592		220,000		242,000		250,433.
EBSA	Employee Retirement Income Security Act.	Section 209(b): Failure to furnish reports (*e.g.*, pension benefit statements) to certain former participants and beneficiaries or maintain records.	29 CFR 2575.2(a)	1974	Pub. L. 93–406		10		11		28.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.2(b)	1987	Pub. L. 100–203		1,000		1,100		2,063.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(4)—Per day for failure to disclose certain documents upon request under ERISA 101(k) and (l); failure to furnish notices under 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.2(c)	1993	Pub. L. 103–66		1,000		1,000		1,632.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(5)—Per day for each failure to file annual report for Multiple Employer Welfare Arrangements (MEWAs).	29 CFR 2575.2(d)	1996	Pub. L. 104–91		1,000		1,100		1,502.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(6)—Per day for each failure to provide Secretary of Labor requested documentation not to exceed a per-request maximum.	29 CFR 2575.2(e)	1997	Pub. L. 105–34		100 per day, not to exceed 1,000 per request.		110 per day, not to exceed 1,100 per request.		147 per day, not to exceed 1,472 per request.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(7)—Per day for each failure to provide notices of blackout periods and of right to divest employer securities—each statutory recipient a separate violation.	29 CFR 2575.2(f)	2002	Pub. L. 107–204		100		100		131.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS—Continued

Agency	Law	Name/ Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) ($)	Max penalty (non IAA) ($)	11/15 Min ($)	11/15 Max ($)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
EBSA	Employee Retirement Income Security Act.	Section 502(c)(8)—Per each failure by an endangered status multiemployer plan to adopt a funding improvement plan or meet benchmarks; failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.2(g)	2006	Pub. L. 109–280		1,100		1,100		1,296.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(A)—Per day for each failure by an employer to inform employees of CHIP coverage opportunities under Section 701(f)(3)(B)(i)(I)—each employee a separate violation.	29 CFR 2575.2(h)	2009	Pub. L. 111–3		100		100		110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(B)—Per day for each failure by a plan to timely provide to any State information required to be disclosed under Section 701(f)(3)(B)(ii), as added by CHIP regarding coverage coordination—each participant/beneficiary a separate violation.	29 CFR 2575.2(i)	2009	Pub. L. 111–3		100		100		110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—Failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of Sections 702(a)(1)(F), (b)(3), (c) or (d); or Section 701; or Section 702(b)(1) with respect to genetic information—daily per participant and beneficiary non-compliance period.	29 CFR 2575.2(j)(1)	2008	Pub. L. 110–233		100		100		110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.2(j)(2)	2008	Pub. L. 110–233	2,500		2,500		2,745	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.2(j)(3)	2008	Pub. L. 110–233	15,000		15,000		16,473	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.2(j)(4)	2008	Pub. L. 110–233		500,000		500,000		549,095.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(12)—Per day for each failure of a CSEC plan in restoration status to adopt a restoration plan.	29 CFR 2575.2(k)	2014	Pub. L. 113–97		100		100		100.

EBSA	Employee Retirement Income Security Act.	Section 502(m)—Failure of fiduciary to make a proper distribution from a defined benefit plan under section 206(e) of ERISA.	29 CFR 2575.2(l)	1994	Pub. L. 103–465		10,000		10,000		15,909.
EBSA	Employee Retirement Income Security Act.	Failure to provide Summary of Benefits Coverage under PHS Act section 2715(f), as incorporated in ERISA section 715 and 29 CFR 2590.715–2715(e).	29 CFR 2575.2(m)	2010	Pub. L. 111–148		1,000		1,000		1,087.
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3)	1990	Pub. L. 101–508		7,000		7,000		12,471.
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4)	1990	Pub. L. 101–508		7,000		7,000		12,471.
OSHA	Occupational Safety and Health Act.	Willful or Repeated	29 CFR 1903.15(d)(1) and 29 CFR 1903.15(d)(2).	1990	Pub. L. 101–508	5,000	70,000	5,000	70,000	8,908	124,709.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6)	1990	Pub. L. 101–508		7,000		7,000		12,471.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5)	1990	Pub. L. 101–508		7,000		7,000		12,471.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1)	1993	Pub. L. 103–3		100		110		163.
WHD	Fair Labor Standards Act	FLSA	29 CFR 578.3(a)	1989	Pub. L. 101–157		1,000		1,100		1,894.
WHD	Fair Labor Standards Act	Child Labor	29 CFR 579.1(a)(1)(i)(A)	2008	Pub. L. 110–233		11,000		11,000		12,080.
WHD	Fair Labor Standards Act	Child Labor resulting in serious injury or death.	29 CFR 579.1(a)(1)(i)(B)	2008	Pub. L. 110–233		50,000		50,000		54,910.
WHD	Fair Labor Standards Act	CL willful or repeated resulting in serious injury or death.	29 CFR 579.1(a)(1)(i)(B)	2008	Pub. L. 110–233		100,000		100,000		109,820.
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)	1983	Pub. L. 97–470		1,000		1,000		2,355.
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1)	1990	Pub. L. 101–649		1,000		1,000		1,782.
WHD	Immigration & Nationality Act.	H1B willful or discrimination.	20 CFR 655.810(b)(2)	1998	Pub. L. 105–277		5,000		5,000		7,251.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3)	1998	Pub. L. 105–277		35,000		35,000		50,758.
WHD	Immigration & Nationality Act.	H2B[17]	29 CFR 503.23	2005	Pub. L. 109–13		10,000		10,000		11,940.
WHD	Immigration & Nationality Act.	D–1	20 CFR 655.620	1990	Pub. L. 101–649		5,000		5,000		8,908.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)	1962	Pub. L. 87–581		10		10		25.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50–201.3(e)	1936	49 Stat. 2036		10		10		25.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)	1988	Pub. L. 100–347		10,000		10,000		19,787.
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)	2010	75 FR 6884		1,500		1,500		1,631.
WHD	Immigration & Nationality Act.	H2A willful or discrimination.	29 CFR 501.19(c)(1)	2008	73 FR 77110		5,000		5,000		5,491.
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)	2010	75 FR 6,884		50,000		50,000		54,373.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)	2010	75 FR 6884		100,000		100,000		108,745.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)	2008	73 FR 77110		5,000		5,000		5,491.
WHD	Immigration & Nationality Act.	H2A displacing a US worker.	29 CFR 501.19(e)	2010	75 FR 6,884		15,000		15,000		16,312.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker.	29 CFR 501.19(f)	2010	75 FR 6,884		15,000		15,000		16,312.
WHD	Fair Labor Standards Act	Home Worker	29 CFR 530.302	1988	53 FR 45706	10	500	10	500	20	989.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to file first report of injury or filing a false statement or misrepresentation in first report.	20 CFR 702.204	1984	Pub. L. 98–426		10,000		11,000		22,587.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS—Continued

Agency	Law	Name/ Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) ($)	Max penalty (non IAA) ($)	11/15 Min ($)	11/15 Max ($)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments.	20 CFR 702.236	1927	44 Stat. 1432		100		110		275.
OWCP	Longshore and Harbor Workers' Compensation Act.	Discrimination against employees who claim compensation or testify in a LHWCA proceeding.	20 CFR 702.271(a)(2)	1984	Pub. L. 98–426	1,000	5,000	1,100	5,500	2,259	11,293.
OWCP	Black Lung Benefits Act	Failure to report termination of payments.	20 CFR 725.621(b), (d)	1978	Pub. L. 95–239		500		550		1,375.
OWCP	Black Lung Benefits Act	Failure to file required reports.	20 CFR 725.621(d)	1978	Pub. L. 95–239		500		550		1,375.
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits.	20 CFR 726.300	1978	Pub. L. 95–239		1,000		1,000		2,500.
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with fewer than 25 employees.	20 CFR 726.302(c)(2)(i)	2001	65 FR 79920	100		100		134	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with 25–50 employees.	20 CFR 726.302(c)(2)(i)	2001	65 FR 79920	200		200		268	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with 51–100 employees.	20 CFR 726.302(c)(2)(i)	2001	65 FR 79920	300		300		402	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(i)	2001	65 FR 79920	400		400		535	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(4)	2001	65 FR 79920	100		100		134	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5)	2001	65 FR 79920	300		300		402	
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits.	20 CFR 726.302(c)(5)	1978	Pub. L. 95–239		1,100		1,100		2,750.

---

[17] *See* supra note 6.

Signed at Washington, DC, this 24th day of June, 2016.

Thomas E. Perez,

Secretary, U.S. Department of Labor.

[FR Doc. 2016–15378 Filed 6–30–16; 8:45 am]

BILLING CODE 4510–HL–P

Reader Aids

Federal Register

Vol. 81, No. 127

Friday, July 1, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JULY

42983–43462......................... 1

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 27, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 2016

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	Jul 18	Jul 22	Aug 1	Aug 5	Aug 15	Aug 30	Sep 29
July 5	Jul 20	Jul 26	Aug 4	Aug 9	Aug 19	Sep 6	Oct 3
July 6	Jul 21	Jul 27	Aug 5	Aug 10	Aug 22	Sep 6	Oct 4
July 7	Jul 22	Jul 28	Aug 8	Aug 11	Aug 22	Sep 6	Oct 5
July 8	Jul 25	Jul 29	Aug 8	Aug 12	Aug 22	Sep 6	Oct 6
July 11	Jul 26	Aug 1	Aug 10	Aug 15	Aug 25	Sep 9	Oct 11
July 12	Jul 27	Aug 2	Aug 11	Aug 16	Aug 26	Sep 12	Oct 11
July 13	Jul 28	Aug 3	Aug 12	Aug 17	Aug 29	Sep 12	Oct 11
July 14	Jul 29	Aug 4	Aug 15	Aug 18	Aug 29	Sep 12	Oct 12
July 15	Aug 1	Aug 5	Aug 15	Aug 19	Aug 29	Sep 13	Oct 13
July 18	Aug 2	Aug 8	Aug 17	Aug 22	Sep 1	Sep 16	Oct 17
July 19	Aug 3	Aug 9	Aug 18	Aug 23	Sep 2	Sep 19	Oct 17
July 20	Aug 4	Aug 10	Aug 19	Aug 24	Sep 6	Sep 19	Oct 18
July 21	Aug 5	Aug 11	Aug 22	Aug 25	Sep 6	Sep 19	Oct 19
July 22	Aug 8	Aug 12	Aug 22	Aug 26	Sep 6	Sep 20	Oct 20
July 25	Aug 9	Aug 15	Aug 24	Aug 29	Sep 8	Sep 23	Oct 24
July 26	Aug 10	Aug 16	Aug 25	Aug 30	Sep 9	Sep 26	Oct 24
July 27	Aug 11	Aug 17	Aug 26	Aug 31	Sep 12	Sep 26	Oct 25
July 28	Aug 12	Aug 18	Aug 29	Sep 1	Sep 12	Sep 26	Oct 26
July 29	Aug 15	Aug 19	Aug 29	Sep 2	Sep 12	Sep 27	Oct 27